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ABSTRACT

The subcommittee met to discuss and hear testimony on Title IX of the Education Amendments of 1972, a law designed to prohibit sex discrimination in intercollegiate athletics at federally funded education programs or activities. Among issues addressed were the means by which universities demonstrate that they are in compliance with Title IX as well as the achievements and benefits of the legislation in the 23 years since it was passed. Witnesses who appeared in panels to testify included House Representatives Hastert and Collins and representatives of the Office of Civil Rights at the Department of Education. Also appearing were representatives of universities including the president of Brown University, Vartan Gregorian, and president of Eastern Illinois University, David L. Jorns. They were either troubled by the direction of Title IX enforcement or felt that current enforcement allows an appropriate level of flexibility in achieving compliance. Representatives of several organizations in the athletic community appeared including the National Association of Collegiate Women Athletics Administrators, the National Wrestling Coaches Association, Women's Sports Foundation, the College Football Association. These offered differing opinions on the impact of Title IX on their sports and athletes. Extensive additional material that was submitted for the record is included. (JB)

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HEARING ON TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

HEARING

BEFORE THE

SUBCOMMITTEE ON
POSTSECONDARY EDUCATION, TRAINING AND
LIFE-LONG LEARNING

OF THE

COMMITTEE ON ECONOMIC AND
EDUCATIONAL OPPORTUNITIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MAY 9, 1995

Serial No. 104–31

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HEARING ON TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

TUESDAY, MAY 9, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON POSTSECONDARY EDUCATION, TRAINING AND LIFE-LONG LEARNING OF THE COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES, *Washington, DC.*

The subcommittee met, pursuant to call, at 9:07 a.m., Room 2175, Rayburn House Office Building, Hon. Howard P. "Buck" McKeon, Chairman, presiding.

Members present: Representatives McKeon, Gunderson, Goodling, Petri, Funderburk, Souder, Williams, Reed, Roemer, Becerra, Woolsey, and Clay.

Also present: Representatives Ganske, Barrett (R–NE), Ewing, Graham, and Mink.

Staff present: Kathleen M. Gillespie, Workplace Policy Counsel; Kent Talbert, Professional Staff Member; Karen A. Wayson, Staff Assistant; Marshall Grigsby, Minority Senior Legislative Associate; Rick Jerue, Minority Legislative Associate; Broderick Johnson, Minority General Counsel; Gail Weiss, Minority Staff Director; and Laura Geer, Minority Executive Assistant.

Chairman MCKEON. Good morning. The Subcommittee on Postsecondary Education, Training and Life-Long Learning is meeting today to consider the issue of Title IX and intercollegiate athletics. As many of you know, Title IX was enacted as part of the Education Amendments of 1972 to prohibit discrimination on the basis of sex in federally funded education programs or activities. In the area of the intercollegiate athletics, Title IX generally requires that colleges and universities provide equal opportunities to both male and female student-athletes.

Like many Members of Congress, I have received a number of inquiries from my constituents, including athletes, coaches, parents, and administrators regarding the means by which universities demonstrate that they are in compliance with Title IX. Some are concerned about what they perceive to be an overemphasis on a "numbers" game, merely counting the number of teams and athletes on the male and female side of the ledger. Others have described the benefits they have derived throughout their lives from the athletic opportunities they see as directly descending from the passage of Title IX. These varying perspectives on the role of Title IX in ensuring equal opportunity in athletics present a basis for an interesting discussion and are the reason for the hearing today.

We have several panels of very distinguished witnesses, led off by our colleagues, Representatives Hastert and Collins. We will also hear from the Office of Civil Rights at the Department of Education and from representatives of universities who are variously troubled by the direction of Title IX enforcement or who feel that there is an appropriate amount of flexibility in achieving compliance with Title IX. Finally we will hear from several organizations in the athletic community who will offer differing opinions as to the impact of Title IX on their sports and athletes.

I believe the hearing will offer a balanced discussion of the many issues involved in Title IX and intercollegiate athletics, and I look forward to hearing from all of the witnesses. With that, I turn to the Ranking Member, the gentleman from Montana, Mr. Williams, for his opening comments.

Mr. WILLIAMS. Thank you. We Americans do not hold that we are all born with equal talents. But by constitutional requirement and our long tradition, we do hold that all people are born with the equal opportunity to fully develop whatever talents they have. And it has been the tradition of this committee, this Congress, and this Nation to pass and enforce whatever laws are required to assure that equal opportunity to all of our people, regardless of their religion, their ethnic background, their color, and more recently, starting in 1972, regardless of whether they are male or female. And so Title IX was enacted those 23 years ago to fulfill that assurance.

It says, in effect, that any educational institution receiving Federal funds must provide an equal opportunity to men as well as women, boys as well as girls, to fully pursue a total education experience. And because athletics has long been seen in America to be an integral part of total school experience, Title IX required that both sexes have an equal opportunity to participate in sports and receive the significant benefits that sports provide.

Now, the question is: Has Title IX been successful? Does it work? Well, just prior to 1972, 2 percent of our Nation's college athletes were women. Today 35 percent of our Nation's college athletes are women. Before Title IX, fewer than 300,000 high school girls competed in sports. Today that number is more than 2 million.

Title IX works. Title IX provides to my daughters and yours what the Constitution assures them. And by the way, today many more men and boys participate in athletics, organized school athletics, than participated in 1971, and for each of the last four years, men's participation in college athletics has increased beyond the previous year. Last year, more men participated in intercollegiate athletics than in any year in the previous decade.

Is Title IX perfect? Well, almost nothing else is, so probably not. Can it be improved? Perhaps. But as we attempt to improve it, let's not be guided by myth or unsubstantiated anecdote. Let's look at the facts, remembering what the Constitution and our tradition demand and require.

Let's keep in mind what Title IX is all about. It is about the daughters of this country. So this hearing is important. The action this committee takes will be very important. And I would add this: It will be important primarily because of the policy implications, but I also advise my colleagues on both sides, it will also be important because of the politics. Many of your voters have daughters.

Thank you, Mr. Chairman.

Mr. CLAY. Mr. Chairman.

Chairman McKeon. Yes.

Mr. Clay. I would like to commend you for holding this hearing and, hopefully, out of this will come an even greater enforcement of Title IX as our Ranking Member just mentioned. It has been a very effective program, and I certainly hope we will enforce it even more strenuously than prior to today.

Chairman McKeon. Thank you, Mr. Clay. And if any other Members have opening statements, to put in the record, we will do so without any objection.

[The prepared statement of Mrs. Mink follows:]

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Patsy T. Mink

OPENING STATEMENT
U.S. CONGRESSWOMAN PATSY T. MINK
OF HAWAII
TITLE IX: GENDER EQUITY IN ATHLETICS
SUBCOMMITTEE ON POSTSECONDARY EDUCATION, TRAINING, AND LIFE-LONG LEARNING
MAY 9, 1995

Mr. Chair, I appreciate the opportunity to join the Postsecondary Education, Training, and Life-Long Learning Subcommittee for today's hearing on Title IX of the Education Act Amendments and its application to college athletics. While I am not a Member of this Subcommittee, the subject of this hearing is one of great importance to me, and has been a central part of my work as a Member of Congress over the years.

I was a member of this Committee when we wrote Title IX into the law to protect equal educational opportunities for girls and women. Because of Title IX women have gained entrance into law, medical and engineering schools; girls are no longer segregated into home economic classes and can now take advantage of more technical skill training traditionally offered only to boys; and girls and women have legal protections from sexual harassment and other forms of discrimination in schools.

One of Title IX's greatest successes has been in the areas of collegiate athletics, the subject of today's hearing. It is only because of Title IX that women athletes now have similar opportunities as men have had to develop their athletic skills through intercollegiate sports and utilize their skills to help them pursue higher education.

When Congress passed Title IX in 1972, women represented a mere 2% of the nation's college varsity athletes and received only 1/2 of one percent of schools' athletic budgets. Athletic scholarships for women did not exist.

The number of college women participating in competitive athletics has gone from 16,000 before Title IX to over 158,000. Women now represent 35% of college athletes nationwide.

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This success has had an effect on our elementary and high schools as well. Now that girls see the potential for participation in college athletics, participation in sports at the high school and elementary school level has increased. Before Title IX fewer than 300,000 high school girls played competitive sports, today the number is around 2.12 million.

One only has to look at the tremendous commercial success of the NCAA Women's Basketball Tournament last month to recognize the success of Title IX. If we didn't have Title IX, we would have never seen that tournament on national television.

In recent months opponents of Title IX have been working to exempt certain sports from the application of Title IX. As an author of the law, I hope that this Subcommittee will reject all attempts to weaken the application of Title IX.

This is not a new issue. Football and other sports who claim to be revenue-producing, have sought exemptions from the very beginning of implementation of Title IX. And Congress has repeatedly rejected these attempts to limit Title IX's application. In 1975, I led the fight in the House against a floor amendment to exempt revenue-producing sports. The Congress rejected this amendment, as it rejected other attempts to weaken Title IX in subsequent years.

The evidence bares out that it is only through the overall application of Title IX, with no exceptions, that we have been able to achieve the progress toward parity for women. And I believe the testimony from our witnesses today will demonstrate this point.

Let me be clear, we have made much progress in gender equity in sports, but we are far from reaching parity for women college athletes. Any steps to exempt certain sports will undo the progress we have made.

The goal of Title IX is to achieve gender equity, not to hurt men's sports as some may argue here today. The Department of Education Office of Civil Rights guidelines are by far lenient enough in order for schools to comply with Title IX without hurting men's sports.

The standards schools must achieve under Title IX are very minimal. A school simply has to show that it is improving it's women's athletic program or that it is meeting the needs and abilities of its women students in order to be in compliance with the law. I would argue that these standards are far too lenient and that much more vigorous enforcement of Title IX is needed for women's athletics to reach parity.

Colleges and universities have had 26 years to come into compliance with Title IX and there is no excuse for lack of compliance, or the notion that certain men's sports should be exempt when determining compliance with the law.

Some argue that revenue-producing sports like football underwrite women's teams This is simply not true In fact the majority of football teams in the country do not even pay for their own operations

According to the NCAA 1994 Revenues and Expenses in Intercollegiate Sports report 80% of all NCAA football programs did not generate enough money to pay for its own operations and 67% of Division I teams lose money

I would like to enter into the record recent editorials from Sports Illustrated and the New York Times which support strong enforcement of Title IX and oppose any exemptions

The bottom line is that athletic opportunities at the college level are beneficial to women, and the young women of our nation have been deprived of equal opportunities in this field for decades Participation in athletics helps women maintain their health, opens doors to higher education, and provides the potential for professional careers in athletics Our entire society benefits from their achievements and their contributions Let us not turn back the clock for women by weakening Title IX and allowing colleges and universities to continue to deny women opportunities for success in athletics, academics and in their future careers

We have many fine witnesses here today I would like to say a special welcome to our colleague, Congresswoman Cardiss Collins who has done extensive work in examining the issue of gender equity in college athletics Her expertise on this issue will contribute much to these proceedings today and I look forward to her testimony

Again, Mr Chair thank you for this opportunity to join the Committee today I look forward to an informative and productive session

Scorecard

EDITED BY ALEXANDER WOLFF AND RICHARD O'BRIEN

The Third Sex

WHAT, YOU didn't know? There are in fact three sexes: male, female and football. Or so it would seem if you listen to the College Football Association and the American Football Coaches Association, which are lobbying in Washington to secure preferential treatment for their sport under Title IX, the law that requires colleges receiving federal funds to provide equitable sports opportunities for women. The football lobby points to its game's huge numbers of scholarship players on Division I-A teams and squads of as many as 130 that gobble up a huge number of participation opportunities. It goes on to argue that this cast of thousands (and by extension its budgets of millions) should be exempt when the feds use as one of their three tests of Title IX compliance whether the ratio of male to female athletes at a school correlates with the student body as a whole. Rep. Dennis Hastert (R., Ill.), a former high school football and wrestling coach, has promised to hold hearings before the House Labor and Education Committee in March, with an eye to eliminating the proportionality guideline.

To bring the totals of male and female athletes into balance, a school can either spend more on women's sports, pare away at football or cut low-profile men's sports like wrestling. More and more colleges are choosing the last of those options, which is why the National Wrestling Coaches Association is also lobbying to have King Football treated as a separate entity. Of course, as colleges attempt to comply with the law, they shouldn't be slackening their commitment to minor men's sports; civil rights statutes are supposed to lift disadvantaged groups, not lower others to disadvantaged status. But with increased spending not an option for most schools, Hastert and his congressional colleagues shouldn't give football a free pass—and *should* keep their truth detectors at hand.

Myth: Football underwrites women's sports. In fact, only about one fifth of the NCAA's 554 football teams even pay for themselves; one third of the programs in Division I-A are running an annual deficit that averages more than $1 million. A Congress that rode to power waving the banner of fiscal responsibility would be derelict to ignore these figures.

Myth: Football has already been cut to the bone. In fact, the sport maintains some breathtakingly spendthrift habits (routinely quartering entire squads in off-campus hotels on Friday nights before home games, for instance, and buying out $1 million coaches to hire $2 million ones). By cutting scholarships from the current Division I-A limit or turning some full rides into partial ones, schools could come into compliance, and the game would actually become more balanced as the major powers could no longer stockpile talented bench warmers.

The courts have consistently upheld Title IX, and on four separate occasions Congress has refused to exempt any sport from the law's purview. But Hastert sounds like a man both determined to overturn precedent and loath to touch football. "Football is unique," he says. "I do not want to take on a national shrine."

Fortunately, a coalition of organizations representing coaches of non-revenue-producing sports besides wrestling—among them field hockey, gymnastics, softball, swimming, track and field, volleyball and water polo—realizes what the wrestling coaches apparently do not: that it's pointless for have-not men to do battle against have-not women. These groups are mobilizing to get the focus back on football, that overfed sacred cow. With noncompliance still prevailing some 23 years after Title IX's enactment, that's precisely where that focus belongs.

P's and Q's, L's and W's

The letter *p* may appear in the middle of the alphabet, but there's nothing middling about either Prairie View A&M or Penn. The Panthers, curators of a 46-game losing streak in football, have had their fecklessness extended to hoops, in which they were 3-15 at week's end and ranked dead last in the most recent power ratings. Has any school had a sorrier simultaneous showing in those two sports—and has any school fared better at them than Penn? In football the Quakers have strung together two straight unbeaten seasons and a Division I-AA record 21 consecutive victories, while the basketball team (*page 62*) is headed for an unprecedented third perfect Ivy League season in a row after last Saturday's 69-50 victory over Princeton. All

Sports Illustrated 2/6/95

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New York Times, April 5, 1995

The Bias Against Women's Sports

The come-from-behind victory of the University of Connecticut women's team in the National Collegiate Athletic Association basketball finals Sunday was more than an exciting finish to an unbeaten season. The sellout crowds and solid television ratings were measures of how far the women's game has advanced in both quality and popularity.

But a recent Federal court decision involving Brown University is a reminder that many institutions of higher learning are still failing to provide what the spirit and letter of the law demand — equity in supporting varsity sports teams for men and women.

Brown stopped financing two women's sports teams four years ago in an effort to cut costs. The Federal district court in Rhode Island now says the action violated Federal law by discriminating against female athletes.

Brown offers more than 30 university-funded intercollegiate sports. It expanded women's teams in the 1970's, after going coed and after passage of Title IX, the Federal statute that forbids sex discrimination at colleges and universities. But in 1991, a universitywide austerity program prompted the sports department to stop financing the women's gymnastics and volleyball teams, making their continuation as varsity teams unlikely. Two men's teams, water polo and golf, were also demoted. With the entire school forced to tighten its belt, Brown felt that the simultaneous demotion of the men's and women's teams should satisfy the law.

Judge Raymond Pettine disagreed. While Title IX generally accommodates different athletic interests among men and women, the critical question is whether a school offers men and women equal opportunities to participate in sports. Judge Pettine ruled that Brown had failed to meet this test by all three standards put forth by the U.S. Department of Education. Brown did not enroll men and women in varsity sports in substantial proportion to their respective undergraduate enrollments, which is the most demanding test. Nor did it expand sports programs for women to meet demand or show that it had already met the demand of all women who wanted to participate, regardless of proportionality.

While 49 percent of undergraduates were men and 51 percent women, Judge Pettine found that the school offered 62 percent of its varsity athletic slots to men and only 38 percent to women. Since women already had fewer athletic opportunities than men, and since Brown's efforts to expand women's sports had peaked, leaving some unmet demand, Judge Pettine ruled that demoting women's teams was even more harmful than demoting men's teams.

The judge gave Brown more time to determine how to allocate resources to support more women's teams. But the university protests that the ruling comes too close to ordering sports by quota, and will appeal.

More than two decades after passage of Title IX, the National Collegiate Athletic Association reports that female participation in sports is slowly but steadily increasing, after sharp cutbacks in the mid-1980's. In 1993-94, women accounted for about 36 percent of college athletes and 53 percent of college students in N.C.A.A. member schools.

Greater emphasis on women's sports would benefit not just the athletes but the fans as well. Just ask the thousands who gathered at Bradley International Airport to welcome home Connecticut's Lady Huskies after their victory over Tennessee.

Chairman MCKEON. I am in a great position to Chair this. I have three sons and three daughters, so I am totally, totally neutral.

We will hear from two of our colleagues on the first panel this morning: Representatives Denny Hastert from Illinois and Cardiss Collins from Illinois.

We will hear first from Representative Hastert.

STATEMENT OF HON. J. DENNIS HASTERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. HASTERT. Thank you, Mr. Chairman. I certainly very much appreciate the opportunity to speak this morning and to thank you for your interest and help in holding this hearing.

I was interested in hearing the opening statements this morning. I understand that there are political threats out there and sometimes, when people make political threats, it is probably not wise to tread on that ground. But you know I have watched Title IX.

I started coaching in high school in 1965 when women didn't have an opportunity to go out for organized athletics. All there was at that time was a GAA, a Girls Athletic Association, and they didn't really have traveling teams and the ability to do that. So I appreciate what Title IX has done for women and girls in this country. I think it has been a wonderful opportunity for women to be able to participate and become involved in athletics and to have the same experience that men have had previous to 1972.

But sometimes when we put laws forward and bring laws forward, especially from the basic intent of what that law was to how it develops, there are "unintended consequences." I think that is one of the things that should be examined. For instance, in my good friend Mr. Williams' district, which is all of Montana, great wrestling programs are being threatened, and we need to take a look at that. I don't think that was ever the intent of Title IX.

You know, my interest in this issue surrounding Title IX of the Education Amendments of 1972 has been fostered in many ways. First, I am a former coach. I coached both wrestling and football for 16 years at a small high school. I married a women's athletic coach who is still teaching elementary P.E. after 29 years. I love seeing young men and young women involved in athletics because I know what they get out of it. I think a lot of the kids I coached during those 16 years and the opportunities that they have had. I was the President of the only wrestling coaches association in 1975 and 1976, and I traveled to Washington several times when the Amateur Sports Act was moving through the Congress to make sure that grassroots had a say in organized athletics in this country.

Secondly, in the last year I have received hundreds of letters from youngsters around this Nation who are no longer able to participate in sports because their sport is being eliminated at the various universities that they attend. I have heard from kids from San Francisco University in California—kids from California all the way to Pennsylvania. They don't understand how schools can promise them an opportunity to compete and later drop those programs in the middle of their eligibility. They don't understand the policy fixes of what is going on.

Coaches representing a wide variety of sports—including wrestling, gymnastics, track and field, rowing, baseball, swimming, soccer, water sports, volleyball, and fencing—have created a coalition to halt this alarming trend. I would like to take a moment to introduce a very distinguished coach and Olympian who is sitting in the audience today. Dan Gable is somewhat of a legend in wrestling. He won the world championship in 1971 at the age of 22, the youngest American ever to do so at that time. The next year, he won the gold medal at the 1972 Olympics in Munich without ever surrendering a single point. He is now a coach at the University of Iowa. Certainly if there is a national legend in any one sport, Dan Gable is this. He is here today because he is concerned about the trend we see out there. I would like to have Dan stand if that is permissible.

[Applause.]

Mr. HASTERT. The oldest sport known to man is disappearing faster than any other. Some people say it is due to a "lack of interest," but that is not true because wrestling is growing in the elementary and secondary levels faster than any other comparative sport.

It was not hard to notice that this trend was getting out of hand in my own State. Western Illinois University dropped its wrestling programs a couple of years ago, ostensibly to make room for women's athletics. The University of Illinois dropped its men's swim team program, resulting in a lawsuit alleging reverse discrimination. Northern Illinois University, in my own Congressional district, proposed to eliminate wrestling and swimming last fall at the urging of the OCR. Eastern Illinois University followed closely behind with an announcement to drop wrestling and swimming.

President David Jorns from Eastern is here today to tell you about their experiences. Most recently, Illinois State University has announced its intention to eliminate wrestling and soccer. This is just in the State of Illinois in the last year or so, but it is happening all across the United States.

When sports are eliminated, the universities cite their need to comply with Title IX and the proportionality rules as part or all of their reason. While I want all schools to comply with Title IX, I strongly believe that the elimination of opportunities for anyone was not the intent of Title IX. These lost opportunities are what I call the "unintended consequences" of Title IX.

So why should a university cut sports to comply with Title IX? Title IX was supposed to be a statute to increase opportunities.

Let me explain briefly. One way a university tries to comply with Title IX is by meeting the "opportunities test," that is, effectively accommodating the interests and abilities of both genders. There are numerous tests, 13 approximately, that a school must meet in order to comply with Title IX and ensure that discrimination does not exist in their athletic programs. These range from money spent on scholarships to coaches' salaries to athletic facilities. However, it is the "opportunities test" that forces schools to drop certain sports. The "opportunities test" has three prongs: first, the proportionality rule, which says participation numbers for male and female students must be substantially proportionate to the respective enrollment numbers; second, the history and continuing practice of program expansion for the underrepresented sex; and third, fully and effectively accommodating interests and abilities of the underrepresented sex. According to the Office of Civil Rights at the Department of Education, the OCR, meeting any *one* of these three prongs signals compliance.

However, that is not what I have been hearing from the field, and the courts have *de facto* made proportionality the only applicable standard.

It is interesting to note that the original statute states only the following: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving financial assistance." This language does not mandate a proportionality rule. Proportionality comes out of the 1979 policy interpretation developed by the Department of Education. However, the courts have given proportionality preference.

The second and third prongs of the "opportunities test" have largely lost all meaning in terms of compliance. For instance, a school which made improvements by adding numerous new teams for female athletes soon after Title IX first became law may no longer be considered to be in compliance with the second prong unless they continue to add new sports. When can they stop adding new sports for anyone interested? Well, when they have met the proportionality test. The third prong is even more nebulous than the first. How is the concept of "interests and abilities" measured? Well, many people have gone through and looked at interest and abilities. How many males and females participate in sports programs at the high school level? Most studies have found that anywhere from 33 to 35 percent of the females participate in the high school venue, where all kinds of sports are available to them, and that 63 to 65 percent of the males participate. That is what the tendency happens to be.

But it is entirely unclear whether the university can take surveys and use them as representations of interest and abilities of the student population due to recent court decisions. Some will claim that surveys cannot show latent interest that would be there if a sport were offered. How in the world is a university going to comply with a standard like that? I just think it is impossible. Thus, schools fall back on, you guessed it, the proportionality rule.

So if a university's numbers do not add up, they either add sports for women, which is in line with providing more opportunities as Congress intended, and that is good, or eliminate sports for men in order to meet their numerical objectives, which is what I consider to be the opposite of Congressional intent.

The proportionality rule is easier because universities know what they have to do to comply. No one is sure how to comply with the interests or abilities, nor does OCR give universities much direction on these issues. In fact, in some cases, it appears OCR actually makes it seem that there is no way to comply with Title IX unless a university reaches proportionality. Again and again, universities submit plans for compliance to OCR, only to have them rejected because they do not attain substantial proportionality.

This *de facto* reliance on proportionality alone leads me to these questions. Are we as a Nation saying that numbers alone indicate discrimination? Has this, in fact, become a quota system that we have imposed on athletic systems in this country? More importantly, have we created a quota system that does not help the underrepresented sex as much as it should because universities can simply cut the overrepresented sex as a means of meeting the test? It does not help create opportunities for women when a school simply cuts a sport such as soccer, swimming, wrestling, or baseball to comply. And we should not support such tactics. This only hurts young women and men across the Nation who are denied the opportunities that should be afforded to them.

The benefits of sports in general—the values of fair play and teamwork, of stretching yourself to the fullest and pushing your mind and body to its utmost performance—will be lost on these women and men who will not get the opportunity they should have. They are caught in the "unintended consequences" of Title IX. They are caught in a quota system which makes them a number, not an athlete. It is not what Congress intended, and it should not be allowed to continue.

Many claim the problem is money. But even this argument rings hollow when you consider the investigators manual does not exempt teams supported by private funds [using no Federal money] from the proportionality equation. For instance, at Princeton University, the wrestling alumni put forward a $2.3 million endowment for the $100,000 per year program, but this is not taken into consideration under the proportionality rule.

So, what are the answers to this dilemma? I do not claim to have all the answers today, and I am as anxious as you are to hear the testimony of so many who are struggling with this issue. They are really the experts. However, I would like to offer some thoughts on where Congress should be headed. The overriding goals should be to follow policies that encourage schools to add rather than subtract athletic opportunity.

As I alluded to earlier, OCR should give universities more specific guidance about how they can comply with the second and third prongs of the "opportunities test." Congress should take back control of this process because the courts are making determinations that bring everything back to proportionality. OCR then, in turn, acquiesces to the court ruling, The second and third prongs become meaningless if they are not further defined. Congress has abrogated our responsibility if we allow this to continue.

OCR also needs to clearly define who is a participant for purposes of these calculations. Should a school count every kid who tries out for the team, everyone who suits up for competition, or should opportunity slots be counted instead? For instance, should a school count a cross country runner who also runs track as one participant or as two athletic opportunity slots. Additionally, should universities be held responsible if the slots they have open for women are then not filled because of a lack of interest? These issues are also part of an ongoing rulemaking and response to the equity in the Athletic Disclosure Act passed by Congress last year. These issues are important to any university that seeks to comply with the proportionality test.

There are other schools, as I have heard, such as Michigan State University, which do not want to open their women's program to walk-ons. They are going to close it to the number of scholarships. That way they close down all opportunities for men and women for expanding opportunities and then put caps, in response, on men's athletic teams to prohibit walk-ons from participating.

However, maybe we need to think in broader terms, to find a way to encourage Title IX compliance without the use of quotas. We do not assume that everyone who enrolls in a university wants the opportunity to be in the band. Let's face it, not everyone wants to play the tuba or the piano. But we operate under similar assumptions when we consider athletics. Proportionality, at the very least, should be based on those in the interested population rather than everyone enrolled. I urge the committee to consider creative solutions to ending the continuing discrimination out there without using proportionality.

Finally, I challenge all of us to think about whether Congress intended for Title IX to result in the elimination of athletic opportunities for anyone. Can any of us say that we want Title IX to be implemented in such a way?

It really disturbs me to hear people claim that it is fine to cut opportunities for men to eradicate discrimination. Well, Mr. Chairman, that is *not* fine. That view represents everything that is wrong about Title IX. When a law ceases to work for positive improvements and simply becomes a way to get back at the system that perpetrated discrimination, we have lost our focus on what it means to work toward gender equity. It doesn't help anyone just to keep tearing the future of these kids out from under them.

I hope this hearing will lay the groundwork for some positive changes to our present system of Title IX. And thank you very much for your attention.

Chairman McKEON. Thank you.

[The prepared statement of Mr. Hastert follows:]

J. DENNIS HASTERT
[illegible]

COMMITTEE ON
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SUBCOMMITTEES:
ENERGY AND POWER
HEALTH AND ENVIRONMENT
TELECOMMUNICATIONS AND FINANCE

REPUBLICAN STEERING
COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–1314

Statement of J. Dennis Hastert, Member of Congress (IL-14)
before the Subcommittee on Postsecondary Education, Training and Life-long Learning
May 9, 1995

Mr. Chairman, I very much appreciate the opportunity to speak this morning and I thank you for your interest and help in holding this hearing.

My interest in the issues surrounding Title IX of the Educational Amendments of 1972 has been fostered in many ways. First, I am a former wrestler and I coached wrestling for 16 years at Yorkville High School, my home town. I love this sport and the kids I coached. I was President of the Illinois Wrestling Coach's Association in 1975 and 1976 and came out to Washington several times to lobby on the Amateur Sports Act.

Secondly, I recently began receiving hundreds of letters from youngsters around the nation who are no longer able to participate in sports because their sport is being eliminated at their various university. I have heard from kids from California all the way to Pennsylvania. They don't understand how a school can promise them the opportunity to compete and drop the program half way through their eligibility.

Also, coaches representing a wide variety of sports, including wrestling, gymnastics, track and field, rowing, baseball, swimming, soccer, water sports, volleyball and fencing have created a coalition to halt this alarming trend. I would like to take a moment to introduce a very distinguished coach and Olympian who is sitting in the audience today. Dan Gable is somewhat of a legend in wrestling. He won the world championship in 1971 at the age of 22, the youngest American ever to do so at that time. The next year he won the gold medal at the 1972 Olympics in Munich without surrendering even a single point! Dan is here today because he is very concerned about the trend we see out there. The oldest sport known to man is disappearing faster than any supposed "lack of interest" could possibly explain.

It was not hard to notice this trend getting out of hand in my own state. Western Illinois University dropped its wrestling program a couple years ago. The University of Illinois dropped its men's swim team resulting in a lawsuit alleging reverse discrimination. Northern Illinois University, in my own Congressional District, proposed to eliminate wrestling and swimming last fall. Eastern Illinois University followed closely behind with an announcement to drop wrestling and swimming. President David Jorns from Eastern is here today to tell you about their experience. Most recently, Illinois State University has announced its intention to eliminate wrestling and soccer. This is just in the state of Illinois in the last few years! But it's happening all across the United States.

When these sports are eliminated, the universities cite their need to comply with Title IX and the proportionality rules as part or **all** of their reason. While I want all schools to comply with Title IX, I strongly believe that the elimination of opportunities **for anyone** was **not** the intent of Title IX. These lost opportunities are what I call the "unintended consequences" of Title IX.

So why would a university cut sports to comply with Title IX? Title IX was supposed to be a statute to **increase** opportunities.

Let me explain briefly. One way a university tries to comply with Title IX is by meeting the "opportunities test." That is, effectively accommodating the interests and abilities of both genders. There are numerous tests (13) that a school must meet in order to comply with Title IX and ensure there is no discrimination in their athletic programs. These range from money spent on scholarships to coach's salaries to athletic facilities. However, it is the opportunities test that forces schools to drop certain sports. The opportunities test is made up of three parts: 1) the proportionality rule, which says the participation opportunities of male and female students must be in numbers substantially proportionate to their respective enrollment rates, 2) the history and continuing practice of program expansion for the underrepresented sex, and 3) the accommodation of the athletic interests and abilities of the underrepresented sex. According to the Office of Civil Rights of the Department of Education (OCR), meeting any **one** of these factors signals compliance.

However, that is **not** what I have been hearing from the field, and the courts have *de facto* made proportionality the only applicable standard. It is interesting to note that the original statute states only the following:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving financial assistance.

This language does not mandate a proportionality rule. Proportionality comes out of the 1979 Policy Interpretation developed by the Department of Education. However, the courts have given proportionality preference.

The second and third prongs of the opportunities test have largely lost all meaning in terms of compliance. For instance, a school which made improvements by adding numerous new teams for female athletes soon after Title IX first became law may no longer be considered to be in compliance unless they are **now** planning to add new sports. When can they stop adding new sports for anyone interested? Well, when they have met the proportionality test.

The third prong is even more nebulous than the first. How is the concept of "interests and abilities" measured? It is entirely unclear whether the university can take surveys and use them as representations of the interests and abilities of the student population due to recent court decisions. Some will claim that surveys can not show the latent interest that would be there if a sport were offered. How in the world is a university to comply with a standard like that?! Thus, schools fall back on, you guessed it, the proportionality rule.

So, if a university's numbers do not add up -- they either add opportunities for women (which is in line with providing more opportunities as Congress intended), or they eliminate enough men's sports teams to meet their numerical objectives (what I consider to be the opposite of Congressional intent).

The proportionality rule is easier -- because universities know what they have to do to comply. No one is sure how to comply with interests and abilities nor does OCR give universities much direction on these issues.

In fact, in some cases, it appears OCR actually makes it seem that there is no way to comply with Title IX unless a university reaches proportionality. Again and again, universities submit plans to OCR for compliance, only to have them rejected because they do not attain substantial proportionality.

This *de facto* reliance on proportionality alone leads me to these questions: Are we as a nation saying that numbers alone indicate discrimination? Has this, in fact, become a quota system? And more importantly, have we created a quota system that does not help the underrepresented sex as much as it should because universities simply cut the "overrepresented" sex as a means of meeting the test? It does not help create opportunities for women when a school simply cuts a sport such as soccer, swimming or wrestling to comply.

And we should not support such tactics. This only hurts young women and men across the nation who are denied the opportunities that should be afforded to them.

The benefits of sport in general -- the values of fair play and teamwork, of stretching yourself to the fullest and pushing your body to its utmost performance -- will be lost on these women and men who will not get the opportunity they should have. They are caught in the unintended consequences of Title IX. They are caught in a quota system which makes them a number and not an athlete. It is not what Congress intended and it should not be allowed to continue.

Many claim the problem is money. But even this argument rings hollow when you consider the investigators manual does not exempt teams supported by private funds (using no federal money) from the proportionality equation. For instance, at Princeton University, the Wrestling Alumni put forward a $2.3 million endowment for the $100,000 per year program. But this does not keep Princeton from having to comply with proportionality rules.

So, what are the answers to this dilemma? I do not claim to have all of the answers today, and I am as anxious as you are to hear the testimony of so many who are struggling with this issue. They are really the experts. However, I would like to offer some thoughts on where Congress should be headed.

The overriding goals should be to follow policies that encourage schools to add, rather than subtract athletic opportunity.

As I alluded to earlier, OCR should give more specific guidance to universities about how they can comply with the second and third prongs of the "opportunities test." Congress should take back control of this process because the courts are making determinations that bring everything back to proportionality. OCR then, in turn, acquiesces to court rulings. The second and third prongs become meaningless if they are not further defined. Congress has abrogated our responsibility if we allow this to continue.

OCR also needs to clearly define who is a participant for purposes of these calculations. Should a school count every kid who tries out for the team, everyone who suits up for competition, or should opportunity slots be counted instead? For instance, should a school count a cross country runner who also runs track as one participant or two athletic opportunity slots? And, should universities be held responsible if the slots they have open for women are then not filled? These issues are also part of an ongoing rulemaking in response to Equity in Athletics Disclosure Act passed by Congress last year. These issues are important to any university that seeks to comply with the proportionality test.

However, maybe we need to think in broader terms to find a way to encourage Title IX compliance without the use of quotas. We do not assume that everyone who enrolls at a university wants (or given the opportunity, would) be in band. Let's face it, not everyone wants to play the tuba. But we operate under similar assumptions when we consider athletics. Proportionality, at the very least, should be based on those in the interested population rather than everyone enrolled. I urge the committee to consider creative solutions to ending the continuing discrimination out there without using proportionality.

Finally, I challenge all of us to think about our intent in this legislation. Did Congress intend for Title IX to result in the elimination of athletic opportunities for anyone? Can any of us say that we want Title IX to be implemented in such a way?

It really disturbs me when people claims that it is fine to cut opportunities for men to eradicate discrimination. Well, Mr. Chairman, **that is not fine. That view represents everything that is wrong about Title IX. When it ceases to be a law to work for positive improvements in the future and simply becomes a way to get back at the systems that perpetrated discrimination, we have lost our focus of what it means to work toward gender equity. It doesn't help anyone to just keep tearing the future of these kids out from under them.**

So, I hope this hearing will lay the groundwork for some positive changes to our present system of Title IX. Thank you for your attention.

Chairman McKEON. Mrs. Collins.

STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mrs. COLLINS. Mr. Chairman and Members of the subcommittee, I certainly appreciate this opportunity to testify on Title IX and its impact upon sports. For the past four years, when I chaired the Subcommittee on Commerce, Consumer Protection, and Competitiveness, I took a particular interest in this subject. The subcommittee held many hearings on gender equity, and four others on college sports in general, conducted workshops, attended NCAA meetings, and had the opportunity to listen to dozens of interested parties on the subject.

During that period, I learned that many concepts taken as fact simply are not. Frankly, I have learned that there is only one overriding fact and it is simply this: The number of girls and young women interested in participating in sports has been increasing by leaps and bounds over the past two decades. That is a very simple truth, but it is at the heart of the debate over Title IX and cannot be ignored. Too often those with very little contact with what is going on in our schools, or perhaps those without daughters or nieces or granddaughters, fail to understand that the sports scene is radically different from the way it was a generation ago. Vast numbers of girls and young women are now playing sports with the same enthusiasm that generations of boys and young men have shown. They play all kinds of sports, and they play them very well.

Whether Title IX has been responsible for generating this enthusiasm, or whether Title IX has been a force for making schools react to this interest, is irrelevant. What is relevant is that Title IX guarantees women the same opportunities as men.

I am sure that during the course of your hearings you will hear the same old tired arguments that Title IX is taking opportunities away from men and that Title IX establishes quotas. Most of these arguments come from school administrators or football coaches who fear that increasing opportunities for women will come out of their hides or, better still, out of their school's pocketbooks.

The reality is the exact opposite. Athletic directors and coaches are the ones who establish the quotas, if you will, at the schools. They decide, often arbitrarily, how many men and how many women get to play sports. Schools, not the Department of Education, are responsible for quotas assuring that men receive over two-thirds of all opportunities and 75 cents of every dollar spent on sports. The purpose of Title IX is to eliminate these artificial quotas and ensure that opportunities are based on student interest, without gender bias.

Title IX simply says that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The law does not require fixed quotas. The law has been interpreted to mean that if schools have participation rates equal to enrollment rates, the school is automatically considered in compliance. However, even if the numbers are not the same, the regulations recognize a school as being in compliance either by showing a history of expanding opportunities in women's programs or by showing that the interests of women have been accommodated.

This is not an odd interpretation of the law. The NCAA Gender Equity Task Force report of July 26, 1993, states, "The ultimate goal for each institution should be that the numbers of male and female athletes are substantially proportionate to their numbers in the institution's undergraduate student population." The report continues, "Thus, the (a) participation, (b) efforts, and (c) interests test of the Title IX regulation are the appropriate tests for equitable participation." The report further notes that "proportionality does not require fixed quotas."

Unfortunately, some school administrators have been opposed to these simple guidelines, which were endorsed by the NCAA. In some cases, they have dismal records of participation of women, show no efforts to increase opportunities for women, and in the face of protests of cutting of women teams sports, go to court with a straight face and argue that there just isn't interest by women in sports. Their arguments often have as much foundation as Al Campanis's assertion that Blacks lack the skill to be major league managers.

To understand what Title IX is all about, let me just provide two analogies. Suppose a family has a son who enjoys playing ball in the backyard, basketball at the gym, or soccer at the park. A second child comes along, but the family income does not change. Do we assume that the second child's interest in the same sports can only be accommodated at the expense of the first child? Of course not. It may be necessary for the two children to learn to share the baseball bat or the basketball. We don't give one child some artificial priority over supplies or even the use of the backyard. You would be surprised that many of the Title IX cases boil down to little more than the need for the men's teams to share resources, share playing fields, and share prime times with the women's team.

Let's look at an analogy in the schools. Suppose that women take an increasing interest in chemistry and start enrolling in greater numbers for chemistry courses. The school may do a number of things to accommodate this increased interest. They may add more teachers, establish additional lab times, build more labs, or create bigger classes. It is also possible that some kids just may not be able to take the class, as often happens at colleges when popular courses are oversubscribed. The one policy that I think we all recognize as unthinkable, however, would be a policy that says we will accommodate the additional interest by women only after the traditional number of male students is accommodated. The same should be true for sports.

Observers of college sports can recount dozens of examples of patterns of sexual discrimination over decades. Women often have far inferior training facilities, practice fields, practice times, and game times. On road trips, there may be three or four women in a room while the men have single rooms.

In the case of Colgate, where the women's team wanted to increase their budget from $6,000 to $12,000, but were denied, the school increased the men's team's stick budget to the same $12,000.

The men's team had a budget of $300,000, while the women's team received a meager $4,000.

At the start of my testimony, I mentioned that the biggest problem in the debate over Title IX is the assumption of "facts" that are fully myths. Therefore, let me leave you with just a few of these myths, and the actual facts as I see them.

Myth #1: The increased participation of women in sports has come at the expense of men. The facts: According to the NCAA itself, over the past 15 years, participation in women's sports increased by 16,320 while the participation in men's sports increased by 12,320. For every new dollar spent on women, two dollars was spent on men.

Myth #2: Football actually pays the costs of women's sports, so football should be excluded from Title IX considerations. The fact: Again, according to the NCAA, an analysis of 1989 budgets found that 45 percent of Division I-A schools reported a deficit in football, while 94 percent of Division I-AA reported a deficit; and that 98 percent of Divisions II and III schools operated at a deficit. Of the 45 percent of Division I-A schools reporting a deficit in 1989 in football, the average deficit was $638,000, which was up from $251,000 in 1981.

Myth #3: The Department of Education is imposing quotas on schools for Title IX compliance. The fact: The Department of Education and the Office of Civil Rights have been spectacularly unsuccessful in forcing schools to do anything. A study by the LBJ School of Public Affairs at the University of Texas found that OCR has failed to provide effective and adequate enforcement and guidance consistent with the letter and spirit of Title IX. That is a quote. In fact, victims of sex discrimination testified at our hearings that OCR was the last place they would go to seek relief. They had to turn to the courts.

Myth #4: Women's sports have no popularity with the public and, therefore, can generate no revenue. The fact: While it is true that schools that fail to provide any promotion for women's sports and schedule teams at odd hours find the results self-fulfilling, interest in women's sports is on the rise. At Stanford, for example, average attendance for women's basketball was 5,284 compared to 5,386 for the men. The 17,000 seats for the women's Final Four games were sold out last September. The women's final game on Sunday afternoon had higher ratings than the NBA game opposite it and higher ratings than a men's semifinal the day before.

In summary, when you get to know the facts, you find out that the issue is simply how schools accommodate the growing interest in women's sports. If schools stick to quotas to ensure artificial advantage for men, the courts will strike them down. However, if schools take steps to accommodate that interest, everyone's child will benefit. It is time for the schools to share their resources fairly and eliminate their self-imposed quotas.

Thank you.

[The prepared statement of Mrs. Collins follows:]

TESTIMONY OF HON. CARDISS COLLINS BEFORE SUBCOMMITTEE ON POST SECONDARY EDUCATION, TRAINING, AND LIFE LONG LEARNING

MAY 9, 1995

Mr. Chairman, and Members of the subcommittee, I appreciate this opportunity to testify on Title IX and its impact upon sports. For the past four years, when I chaired the Subcommittee on Commerce, Consumer Protection, and Competitiveness, I took a particular interest in this subject. The Subcommittee held four hearings on gender equity, and four others on college sports general, conducted workshops, attended NCAA meetings, and had the opportunity to listen to dozens of interested parties in the subject.

During that period, I learned that many concepts taken as facts simply are not. Frankly, I have learned that there is only one overriding fact, and it is simply this:

The number of girls and young women interested in participating in sports has been increasing in leaps and bounds over the past two decades.

That's a very simple truth, but it is at the heart of the debate over Title IX, and one that cannot be ignored. Too often those with very little contact with what is going on in our schools, or perhaps those without daughters, fail to understand the sports scene is radically different from it was a generation ago. Vast numbers of girls and young women are now playing sports with the same enthusiasm that generations of boys and young men have shown. They play all kinds of sports, and they play them well.

Whether Title IX has been responsible for generating this enthusiasm, or instead, has been a force to make schools react to this interest is irrelevant. What is relevant is that women want the same opportunities as men, and Title IX guarantees them that right.

I am sure that during the course of your hearings you will hear the same arguments that you hear against affirmative action -- namely that Title IX is taking opportunities away from men, or that Title IX establishes quotas for women. Most of these arguments come from school administrators or football coaches who fear that increasing opportunities for women will come out of their hides.

The reality is the exact opposite. Athletic directors and coaches are the ones who establish quotas at the schools. They decide, often arbitrarily, how many men and how many women get to play sports. Schools, not the Department of Education, are responsible for quotas assuring that men receive over two-thirds of all opportunities, and 75 cents out of every dollar spent on sports. The purpose of Title IX is to eliminate these artificial quotas, and permit opportunities to be based upon student interest, without gender bias.

Title IX simply says that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The law does not require fixed quotas. The law has been interpreted to mean that if schools have participation rates equal to enrollment rates, the school is automatically considered in compliance. However, even if the numbers are not the same, the regulations allow a school to show compliance either through a history of expanding opportunities in women's programs, or by showing that the interests of women have been fully accommodated.

This is not an odd interpretation of the law. The NCAA Gender Equity Task Force Report of July 26, 1993 states, "The ultimate goal for each institution should be that the numbers of male and female athletes are substantially proportionate to their numbers in the institution's undergraduate student population." The report continues, "Thus, the (a) participation, (b) efforts and (c) interests tests of the Title IX regulation are the appropriate tests for equitable participation." The report also notes that "proportionality does not require fixed quotas."

Unfortunately, some school administrators have been opposed to these simple guidelines, which were endorsed by the NCAA. In some cases, they have dismal records of participation of women, show no efforts to increase opportunities for women, and in the face of protests over the cutting of women's team sports, go into court with a straight face and argue that there just isn't interest by women in sports. Their arguments often have as much foundation as Al Campanis's assertion that Blacks lack the skills to be major league managers.

To understand what Title IX is all about, let me just provide two analogies. Suppose a family has a son and he enjoys playing ball in the backyard, basketball at the gym, or soccer at the park. A second child comes along, but the family income does not change. Do we assume that the second child's interests in the same sports can only be accommodated at the expense of the first child? Of course not. It may become necessary for the two children to learn to share the baseball bat or the basketball. We don't give one child some artificial priority over supplies, or even the use of the back yard. You would be surprised that many of the Title IX cases boil down to little more than the need for the men's teams to share resources, share playing fields, and share prime times with the women's teams.

Let's look at an analogy in the schools. Suppose that women take an increasing interest in chemistry, and start enrolling in greater numbers for chemistry courses. The school may do a number of things to accommodate this increased interest. They may add more teachers, establish additional lab times, build more labs, or create bigger classes. It is also possible that some kids may just not be able to take the class, as often happens at colleges when popular courses are oversubscribed. The one policy that I think we all recognize is unthinkable, however, would be a policy that says we will accommodate the additional interest by women only after the traditional number of male students is accommodated. The same should be true for sports.

Observers of college sports can recount dozens of examples of patterns of sex discrimination over decades. Women often have far inferior training facilities, practice fields, practice times, and game times. On road trips, there may be three or four women to a room, while the men have single rooms. In the case of Colgate, where the women's team wanted to increase their budget from $6,000 to $12,000, but were denied, the school increased the men's team's stick budget to the same $12,000. The men's team had a budget of $300,000, while the women received $4,000.

At the start of my testimony I mentioned that the biggest problem in the debate over Title IX is the assumption of "facts" that are actually myths. Therefore, let me leave you with just a few of these myths, and the actual facts.

Myth #1: The increased participation of women in sports has come at the expense of men. The facts: According to the NCAA, over the past 15 years, participation in women's sports increased by 16,320 while participation in men's sports increased by 12,320. For every new dollar spent on women, $2 have been spent on men.

Myth #2: Football actually pays the cost of women's sports, so football should be excluded from Title IX considerations. The facts: According to the NCAA, an analysis of 1989 budgets found that 45% of Division I-A schools reported a deficit in football, while 94% of Division I-AA reported a deficit. Of Divisions II and III schools, 98% operated at a deficit. Of the 45% of Division I-A schools reporting a deficit in football, the average deficit was $638,000, which was up from $251,000 in 1981.

Myth #3: The Department of Education is imposing quotas on schools for Title IX compliance. The facts: The Department of Education and the Office of Civil Rights, have been spectacularly unsuccessful in forcing schools to do anything. A study by the LBJ School of Public Affairs at the University of Texas found that "OCR has failed to provide effective and adequate enforcement and guidance consistent with the letter and spirit of Title IX." In fact, victims of sex discrimination testified at our hearings that OCR was the last place they would go to seek relief. They turned to the courts.

Myth #4: Women's sports have no popularity with the public, and therefore can generate no revenue. The facts: While it is true that schools that fail to provide any promotion for women's sports and schedule games at odd hours find the results self-fulfilling, interest in women's sports is on the rise. At Stanford, average attendance for women's basketball was 5,284 compared to 5,386 for the men. The 17,000 seats for the women's Final Four games were sold out last September. The women's final game on Sunday afternoon had higher ratings than the NBA game opposite it, and higher ratings than a men's semifinal the day before.

In summary, when you get to know the facts, you find out that the issue is simply how do schools accommodate the growing interest in women's sports. If schools stick to quotas to ensure an artificial advantage for men, the courts will strike them down. However, if schools take steps to accommodate this interest, everyone's child will benefit. It is time for schools to share their resources fairly, and eliminate their self-imposed quotas.

Chairman McKEON. Thank you. We have some Members here today who are not on our subcommittee, and we appreciate their interest. We have Representative Ganske from Iowa; Bill Barrett from Nebraska who is on our full committee, but is not a Member of this subcommittee; Mrs. Mink from Hawaii; and Ranking Member of the full committee, Mr. Shaw from Missouri.

We will try to hold the questions to Members of the committee unless you have——

Mr. CLAY. Mr. Chairman, don't confuse me with Clay Shaw.

Mr. WILLIAMS. This is William Clay.

Chairman McKEON. Actually, Clay Shaw is a great one to be confused with, and I apologize.

Mr. CLAY. He is a good friend of mine, too.

Chairman McKEON. But it is nice to be recognized for who we really are. And, again, I am new at this and appreciate your forbearance.

Mr. Williams, are you ready for questions?

Mr. WILLIAMS. Thank you, Mr. Chairman.

Congressman, much of your testimony with regard to the fix that you would like to see enacted for Title IX had to do with rulemaking. Are you encouraging a legislative change that would require a change in rulemaking?

Mr. HASTERT. Well, I think the law certainly set out a policy that, over the years, has been developed by the Department of Education, now OCR, and I think it is misdirected. I think the proportionality rule is something of "unintended consequences." It was never intended to cut back participation of men in athletics. I mean, this is the only civil rights law that I know of that punishes innocent bystanders, and this is what is happening at many of our universities today.

I can give you numbers of sports that have been diminished in the last decade. But what I am saying is that we need to take a look at the use of proportionality. There is a three-pronged rule. Proportionality is one. Accommodating interests and abilities is another. Showing a history and continuing practice of program expansion in the past three years is the other prong. You know, the original rulemaking said all three prongs should be treated in an equal way—that is, complying with any one of the three meets the standard. That is not being done today. Proportionality is the only one that is being considered.

Mr. WILLIAMS. But that is all an interest of rulemaking rather than the law. That is not in the law. Those are in the regulations. Would you have us require a change in that rulemaking process.

Mr. HASTERT. As you see, I don't have legislation, but this needs to be brought forward. We need to look at it. That is one of the jobs of Congress, to have oversight on what is happening. And I think we need to elevate that and take a look at it because I don't think that was the intent of the law and that is exactly why we are doing it.

Mr. WILLIAMS. Thank you.

Congresswoman Collins, we appreciate the good work that you and your committee have done in previous Congresses concerning oversight of this matter. Did you find any "unintended consequences" from Title IX during your oversight visits or hearings?

Mrs. COLLINS. No, I did not find any "unintended consequences" at all of the law itself. What I did find was a reluctance on the part of school administrators to fully implement Title IX. When Title IX first became law, a great number of universities began to comply. As time went on, that interest began to fade. By the time we looked at the law again, we found very little compliance at all. What had happened is that somebody had just forgotten that Title IX was on the books, and they weren't doing anything about it.

What surprised me the most during our hearings and investigations was the fact that, even though Title IX was on the books, OCR was not as vigilant as it could have been. What has happened as of now is that instead of OCR looking at this and saying, well, Federal dollars are not being spent fairly, they sort of closed their eyes to that and left an opening for young students themselves to look into Title IX and take their cases to court themselves.

Now it seems to me that is an awful burden to put on a student—to have to go through the judicial system on their own to say, well, we want to play soccer. We, as girls, have a right to be engaged in sports, as do boys in whatever their activities happen to be.

It has been reported here, and many people seem to think, that there has been a decline in men's sports, but there has been, on the other hand, sort of a seesaw effect, if you will, where there has been a decline in men's sports, there has been an increase in women's sports, so the things are beginning to balance out because of the renewed interest in Title IX.

The one thing I do want to point out is this and everybody—both Congressman Hastert and I haven't really focused on the big point. The big point around Title IX happens to center around money. Football, it seems to me, is thought to be sacrosanct in our colleges and universities. That is because college football—to a large degree because of the advent of television and televised football games—is a big money maker. It isn't the only money maker for a college or university, but it is the one that the coaches and athletes and the Presidents want to keep.

Because of that, everybody says, well, you know, we can get rid of wrestling. We can get rid of men in other activities, but we are going to keep the football team, and we are going to have squads of a hundred on the football team—twice as many as we have for the Chicago Bears, as a matter of fact—and we are going to give them all this money. We are going to have them traveling the country in airplanes and roaring up the road in air-conditioned buses, whereas the women are not going to have these kinds of funds. The men are going to have their own rooms when they play out of their school environment. Women are going to have three or four in one room. They are not going to have the same kind of practice time. They are not going to have the soccer fields. They are not going to have many of the things that are provided for the young men. This is nefarious, something that has to be corrected.

Title IX hopes to correct some of these problems. It seems to me we have to talk about the whole thing. The one thing that seems to be forgotten—and then I am going to conclude—is that the primary function of any educational institution is to educate our children, to teach them goals and morals and high standards, et cetera. But when we have discrimination involved, one group of people against another, women against men, we are not doing our jobs. There is more than teaching literature. There is more than teaching theatrics. There are other things that are life enhancing, and certainly the ability to participate in a fair manner in an educational institution is something we want our girls to know as well as men.

Mr. WILLIAMS. Thank you, Mrs. Collins. Mr. Chairman, . . .

Chairman MCKEON. Mr. Funderburk.

Mr. FUNDERBURK. No questions, Mr. Chairman.

Chairman MCKEON. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

I had three 9 a.m. meetings, so I apologize for being late. I want to follow up, Congresswoman Collins, on your comments there. I assume—and I mean this in a positive sense—you are a supporter of affirmative action.

Mrs. COLLINS. All the way.

Mr. GUNDERSON. I am not sure, I am struggling with that one myself. But isn't the premise of affirmative action to take where we are and to build upon that? My concern with the interpretation of Title IX is that it doesn't build up women's sports.

Mrs. COLLINS. But it has.

Mr. GUNDERSON. Does it say that we are going to bring men down to have an equal level? I don't know how we get there from here.

Mrs. COLLINS. It doesn't bring men down. It hasn't brought men down. What has happened is that in order to make a point and to keep from lowering the number of men on these huge football squads, these athletic directors and coaches have decided to sacrifice the men who happen to be in gymnastics, those who happen to be in soccer, those who happen to be on swimming teams, et cetera, so the students will be the ones who are saying, you know, we have been treated unfairly.

This has happened in our State, as Mr. Hastert has pointed out, and it has happened across the country. The fair thing to say is, well, you don't need 100 young men on a football squad. You need so many men to play football but you also need women because women are interested in sports. They like teamwork. They need to know how to be competitive. They want to feel good about themselves in a sports arena as well as men. That is the thing about fairness. That is about the whole boat rising up, if you will.

Mr. GUNDERSON. I am not against——

Mrs. COLLINS. And I——

Mr. GUNDERSON. [continuing] against sports in any way, shape, or form. My question is: Is the only way to achieve that by tearing down men's sports?

Mrs. COLLINS. I don't think they are being torn down.

Mr. GUNDERSON. How are you going to finance all of this?

Mrs. COLLINS. How is it being financed now?

Mr. GUNDERSON. Not out of the Federal budget.

Mrs. COLLINS. Are you saying that the funds that the Federal Government gives to these colleges and universities should all go to the men and not go to the women? I don't think that is what is intended.

Mr. GUNDERSON. Frankly, I don't think any taxpayer dollars ought to go to sports.

Mrs. COLLINS. Why?

Mr. GUNDERSON. Because I think there are higher priorities in American society than for taxpayer dollars to go to college sports.

Mrs. COLLINS. Well, if that is what you want—let's in fact make sure that Title IX is spent exactly as you want it to be spent and that is when a college or university does not comply with Title IX, they should not get any more Federal funds. That is what Title IX should——

Mr. GUNDERSON. That is what I understand.

Mr. Hastert wants to comment.

Mr. HASTERT. My good friend and colleague, and we have worked on a lot of issues together in a more amicable way, the fact is that in the State of Illinois, you know, it wasn't the administration that cut the sports on many of those issues, it was the OCR that said you had to cut a minor sport. They didn't say you had to cut football. They said you cut swimming. You cut soccer. You cut baseball. Cut wrestling. That is exactly what happened, and those schools were given that choice and only that choice to meet proportionality.

I can tell you, I disagree with my friend from Illinois. For example, in men's gymnastics, 20 years ago, when we had the 1976 Olympics, we had 138 teams competing in gymnastics—a very successful year at the Montreal Olympics. Today, only 31 teams are competing in gymnastics in this Nation. Thirty-one teams is not enough teams to have a national tournament. That means future generations of young men will be deprived of coaches to further their ability to participate in this one sport.

Wrestling, men's swimming, and water polo have all had divisions in danger of losing their championships. Wrestling lost 120 programs in the last 10 years. One hundred twenty programs, Congresswoman.

Mrs. COLLINS. Did those programs go to the women?

Mr. HASTERT. Yes, they did in many cases.

Mrs. COLLINS. Well——

Mr. HASTERT. It is my time. At the same time, that sport had a rising growth rate in both elementary and secondary levels. Sixty-four men's swimming teams have disappeared. Water polo is down to 45 teams. It is not factual to say, in these cases, that men's sports have grown. They haven't. They have been the victims of Title IX.

Mr. GUNDERSON. Thank you.

Thank you, Mr. Chairman.

Chairman MCKEON. Ms. Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman.

I would like to approach this from a different angle. I am a mother of three sons and a daughter. One of my sons was a wrestler; another was an All-State, both in high school and college, baseball player; the other, in college, Honorable Mention, All-American Tackle; and my daughter was a skater, a competitive skater. And I am absolutely certain that sports contributed a lot to molding all four of my children into very solid individuals as young adults.

I also know that is why they stayed out of trouble when they were in high school—they were busy, they were involved, they were.

doing something that was important to them, and they were too tired to get in trouble.

Also, before I came to Congress, I was a human resources professional, and it was very, very clear to me that the differences between young men and young women who graduated college and got into the business world, had a lot to do with whether or not they had learned teamwork, whether they had gained self-confidence and poise, and whether they had learned through something other than just reading books, how to get along in an atmosphere where you had to give and take, win and lose, and go forward.

The young people who had played sports had an advantage over those who didn't. Now, they could also be young people who played an instrument or did something other than just plain study out of a book.

My point here is, when we are talking about Title IX, not to take away something from the young men, but to bring women up to the same level. Women have to have the same advantages that men have when they enter the real world after college. And sports gives them scholarships, poise, and self-confidence. It is a learning experience, whether it involves team competition or individual competition, like my daughter, as a competitive skater.

I would just say that, if it is necessary to fix Title IX, we fix it by coming up to a higher level, not by going down to a lower level. We should do everything possible to give equal opportunities to both the young women and the young men.

Last year, I worked with you, Congresswoman Collins, on the athletic disclosure bill that was passed. I am wondering, now that the bill is law, has it had an impact and what have you seen from that?

Mrs. COLLINS. I believe that it has had an impact. One of the things that I have learned from speaking to people who are interested in the law, is they feel that it has enabled them to have sort of another prong from which to work to encourage young people who are really interested in getting into sports to know that they can, they have the opportunity to do so. I think it has worked, and I am very pleased with that.

Ms. WOOLSEY. I have a young woman in my district who is in high school who plays on the boys' football team. She and her mother came to me; they are very, very interested in what happens with this Title IX debate because she would like the opportunity to play football in college.

My son was an Honorable Mention, All-American Tackle. I would not want any other son to be tackled by him, much less a daughter.

Could you respond on women in contact sports?

Mr. HASTERT. That is up to the individual. It's the individual's choice. I know one of the people testifying today, T.J. Kerr, from California State at Bakersfield, has initiated a coed wrestling team and has had some success with it. I think that is an individual decision.

But you are right on point. I believe exactly what you believe, that we should expand the opportunities for women, not bring down the opportunities for men. In your State, in California, your sons today, with recent decisions in California, probably wouldn't have the same opportunities in wrestling and baseball that they would have had five or six years ago in college.

Ms. WOOLSEY. I know my time is up, but I would like to suggest that we bring this debate up to that level, that our goal be to equalize this, not to take something away from someone. As soon as we start pitting winners and losers against each other, we have lost the debate, because it won't work.

Mr. HASTERT. That is exactly my thesis, so I thank you.

Ms. WOOLSEY. Thank you, Mr. Hastert, and thank you, Mr. Chairman.

Chairman MCKEON. I think that we may have been a little confrontational here, but I think that is because of the goal that we are working for. Just by bringing it up, I think we have rallied the troops and people are taking sides and fighting over a small piece of the pie, instead of saying what can be done to enhance the whole program.

As I gather from what Mr. Hastert was saying, first of all, not cutting one at the expense of another is how can we expand opportunities for all.

Mr. HASTERT. What has happened in reality is that the Department of Education, through the OCR, has given ultimatums to many schools saying, if you don't wish to expand a woman's sport, you drop two or three men's sports to get close to proportionality. We are saying that is not the intent of Title IX, it is wrong, and we should take another look at it.

Chairman MCKEON. That is, I think, the whole purpose of this hearing. This hasn't been looked at for a number of years, and we are trying to determine what we can do to get everyone in the boat together. That is probably the biggest thing that I have been able to do in coming to Congress is say let's try to work together. This probably would be a good place to be doing it.

Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman.

I welcome my fellow colleague from the State of Illinois before our subcommittee this morning. Certainly many of us, if not all of us, on this subcommittee and in Congress, agree with the spirit of law of Title IX. We want to make sure that girls and women have the opportunities that boys and men have in our society.

As I go around the Third District of Indiana, I find more and more young girls are playing soccer, softball, baseball, yet many of these young women and girls have not yet moved into the college ranks to see this reciprocated and reflected at the collegiate level. For example, at the University of Notre Dame, we have 175 young men try out for the baseball team, and only 35 or 30 can make it. We have only 25 or 27 young women try out for the softball team, and most of them make it. We have one of the best women's softball teams in the country, ranked in the top 20, and we are very proud of that. How do we get this law to work so that we encourage more women at the University of Notre Dame, 175, to try out for the softball team and to make that softball team and maybe increase the numbers to 35 or 40, ultimately on the roster? How do other schools like the University of Iowa and the University of Washington accomplish much of Title IX without eliminating men's programs?

Mr. Hastert, you have said a couple of times that the OCR has required that men's programs be cut. How can you attribute this directly—and maybe you have information that I haven't seen yet—to Title IX rather than simply to some of the cost-cutting that is currently going on at many universities?

Mr. HASTERT. Because in specific instances, when the administration decides to cut a sport because of cost-cutting, just drop a sport and say it is because of cost-cutting. Others have been taken to court and entered in with OCR and had a consent decree or some type of an agreement that OCR will back off their court case if they drop two men's sports.

Mr. ROEMER. And you have seen this in writing from OCR?

Mr. HASTERT. President Jorns from Eastern Illinois University will testify today that that happened in his school, and through our efforts they reengaged the OCR so that they did make a change. I believe Northern Illinois University said that if they expanded one women's sport and dropped two men's sports, then the OCR would back off their case. It is there. It happens time after time, after time, after time.

Mr. ROEMER. I would certainly like to see the proof of that in writing—not that I question what you have said at all—but I will ask the same question to the representatives of the Department of Education's OCR office, and I appreciate your answer.

Representative Collins, let me ask you a question. You certainly have made a very compelling case that we have not complied, that we have a long way to go. What suggestions would you have for us to improve opportunities for women at the collegiate level, and, as I gave the example earlier, how do we encourage young girls to get involved so that we don't see this problem later on?

Mrs. COLLINS. I would like to see OCR begin to take some of these cases to court themselves, rather than having the young girls do so. Then I would like to see the Federal Government deny some of these universities Federal funds. I believe if that were to happen, they would all begin to look at the law and say, well, we are going to be in compliance. Until that happens, I think you are still going to have these arguments, I think you are still going to have people ignoring Title IX, and I think you are still going to have the same problems, where you have the school administrators, you have the NCAA, which, of course, as you know, is composed of the school administrators and the athletic directors and coaches, doing the same things that they are doing now. There has to be something to give them a jolt to let them know that we are very serious about giving young women an opportunity.

It was said here that perhaps we ought to raise funding or create some kind of a mechanism by which the men can stay where they are. But we know the Federal funds aren't there. Who are we fooling? We are kidding ourselves if we think the money is going to drop out of the sky. The money isn't going to drop out of the sky. I think we need to give enforcement a big try. That is what I would like to see happen.

Mr. HASTERT. But you will note that there are a lot of programs, such as at Notre Dame and at others across the country, that offer women slots, scholarship slots, but don't have enough women interested in participating. The interest isn't there, so in order to meet proportionality, they start to cap the number of walk-ons and cap men's participation, which doesn't cost the school any money at all——

Mrs. COLLINS. But there are schools where there is a great deal of interest. Why do you think we have had these courts cases? The women have gone to court saying they want to play soccer, saying they want to have a swimming team, saying they want to play squash or have archery. They want to have these various kinds of sports, and they have been denied the opportunity.

You can always point to one or two isolated incidents and say they are indicative of what is happening across university campuses all over the world. Not the case. I believe we have to have enforcement. I believe the OCR is the place to do it, and until that happens, you are going to have these kinds of problems.

Mr. ROEMER. Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Mr. Barrett would like to acknowledge a member of his State before he has to leave for another meeting.

Mr. BARRETT. I thank the Chairman for recognizing me.

As a Member of the full Committee on Economic and Educational Opportunities, it is a pleasure to be able to sit in for a moment in this hearing today which is important to so many people. I want to take a minute to reflect on the subcommittee's records, that Dr. Tom Osborne, the Coach of the National Champion Nebraska Corn Huskers is in the audience today. As many of you know, he is the winningest active college football coach in the Nation and was just voted the National Coach of the Year. I think it is significant that he is here today because of the continuing interest in a program that has been successful.

And perhaps following up on Mr. Hastert's comments—while we need to encourage, and should encourage, access to viable athletic programs, we also need to be careful because we are walking a very fine line not to penalize successful programs.

So I want to thank the Chairman for allowing me to introduce a friend of mine who the last time we met was at the White House, when Dr. Osborne had his winning Nebraska Corn Huskers in Washington to meet the President a couple of months ago. I wonder if Dr. Osborne would please stand and be recognized.

[Applause.]

Mr. BARRETT. Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Mr. Reed.

Mr. REED. I have no questions.

Chairman MCKEON. I think that concludes all the questions——

Mrs. MINK. Could I ask a question of our colleague Mr. Hastert?

Mr. WILLIAMS. Mr. Chairman, I ask unanimous consent that the gentlelady, not a Member of this subcommittee, be recognized for one question.

Mrs. MINK. I know that the Office of Civil Rights will be testifying also and presenting their side. I am very much interested in your statement that with respect to Eastern Illinois, that the university was given only one avenue to satisfy Title IX, and that was the question of proportionality.

The summaries that I have here indicate that there were no increases in women's athletic opportunities at the university since 1978, and that, taking that note, which was one of the three in the regulations that you need to comply with, OCR searched for areas which might very well meet the other requirements in the regulations. And in searching for aspects of qualifications with respect to the other two, OCR found that women students had requested establishment of programs and were ignored by the university. So, in contrast to the illustration that at Notre Dame, programs were set up, but women were not interested in participating, at Eastern Illinois, specific requests by women athletes were ignored, and no new programs were established for women since 1978.

Could you comment on that?

Mr. HASTERT. First of all, President Jorns will testify on behalf of Eastern Illinois. He is certainly an expert on that situation. My understanding was that one of the sports that was demanded to be put in place was field hockey. That is not an indigenous sport to Illinois; it is more of an East Coast sport.

In addition, the OCR said, you eliminate two men's sports. It is the elimination of men's sports that I think is egregious here. And I think it is fine to grow women's sports as much as possible. I have always been an advocate of that. But to meet proportionality by eliminating men's sports is wrong, whether it happens in Illinois, or in Ohio, or in Hawaii, or in California. It is wrong to do that.

Mrs. MINK. Thank you, Mr. Chairman.

Chairman MCKEON. Mr. Ewing.

Mr. EWING. Thank you, Mr. Chairman. I appreciate being able to participate as an observer and to have a question in your subcommittee. I thought maybe I ought to be sitting out there between my two colleagues from Illinois, both my good friends.

Congresswoman Collins, you seem to indicate that you would advocate more court cases to try to bring this into equality, the equality that you think is lacking. Recently, a university in my district dropped a male sport and added the same sport on the women's side. Would it not be then that the male athletes who can no longer play soccer should be going to court to try to show that they have been denied rights because we now have women's soccer.

Mrs. COLLINS. The court system is open to everybody. That is the way of our country.

Mr. EWING. I realize that, but do you think that will get to the goal of equality? In this case, whatever the reason, whether financial or to come into compliance, they had decided that they will add women's sports and cut men's sports to try to meet the guidelines of the law and their budget requirements. But who does it leave out? It leaves out male athletes who were involved in that sport.

Mrs. COLLINS. Who was left out before? It was the women who wanted to play soccer.

Mr. EWING. Is that equality, though, to change where the discrimination lies?

Mrs. COLLINS. It is not equality, but it equalizes the men and women who want to play. You have both playing. However, if a young man wants to go to court, he is welcome to go to court. That is what our system is for. Perhaps they will rule in his favor. He ought to take it to court if he wants to.

Mr. EWING. That leaves the university with coming back to cut a women's sport then?

Mrs. COLLINS. They should have done the right thing in the first place. It gets them off the hook by saying we have taken this case to court and the judge is going to decide, rather than the administrator of the university making a decision before that time.

Mr. EWING. One follow-up question, Congresswoman. Would you think that there could be a better way to determine the interest between the sexes for sports than just saying you have 50 percent women or 52 percent women, you will have 52 percent slots for females and 48 for men? Do you think there is a better way that we can truly avoid—the point you made very aptly—both sides going to court? Our courts are clogged with a lot of other things.

Mrs. COLLINS. I am interested in hearing suggestions that may be out there. I have given my suggestions for more than four years on this case. I would like to hear what others have to say. I want to hear them say that football is not sacrosanct and that there is an opportunity for women to participate in sports on an equal basis with men.

Mr. EWING. Thank you.

Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Football is not sacrosanct.

Mrs. COLLINS. Is that asking too much, Mr. Chairman?

Chairman MCKEON. I wish we weren't on national television. I would like to talk about this a little bit. In some places it is.

You said you were interested in ideas. One of the comments that was made earlier is that the reasons why we have athletics are that benefits are derived from teamwork and that participation and exercise builds up your muscles. A lot of benefits come from athletics.

You know, I went to Brigham Young University, and one of the things that they did when I went to school was to offer a very good intermural sports program that really enlarged the opportunities. I had great interest, just was never a very good player. But through the intermural sports that they had broadly throughout the school, we were able to participate and get all the other benefits, even though we were never, some of us, able to play on a par that would enable us to play on one of the major teams. That is one possible suggestion where you could get all of the benefits that come from sports, except for the very top competitors—most of them, it seems—at university levels go on to professional sports at some level. We appreciate——

Mr. HASTERT. Could I say one thing and follow up on what Congressman Ewing said, and the encouragement by Representative Collins to go to court. A lot of colleges and universities have a limited amount of money to spend on education—and that pie gets smaller all the time—and are intimidated by being pushed into court. Just as we saw in other types of liability and tort reform cases, the very threat of going to court and having to spend $1 million, or $1.5 or $2 million that they need to spend for the education of young people, to defend themselves in court, in a Federal court against a Federal Agency, they don't see that they can win.

The way the law has been construed and the precedents set by the Federal court, this is an intimidator. So I understand why my good friend from Illinois wants to push people who feel they weren't given a fair shake into Federal courts—because precedents have been set, and the schools would rather settle than spend very precious dollars that could be spent on education trying to defend themselves in Federal court.

Mrs. COLLINS. Mr. Chairman, I would hate to think that the Federal court is an intimidator. That is strong language. It seems to me that Federal courts are out there to be fair to all people. That is pretty heavy.

Chairman MCKEON. Pretty heavy, and I think probably has a great deal of truth.

Mrs. COLLINS. Yes, but let me tell you something; I would hate to think that.

Chairman MCKEON. I want to thank you for bringing this up.

Congressman Hastert, it was your attention that brought this debate and brought this hearing, and I appreciate your doing that. We will excuse the present panel now and move to the next panel.

Thank you very much.

Our next panel will be comprised of the Honorable Norma Cantú, Assistant Secretary for Civil Rights, U.S. Department of Education; Dr. Vartan Gregorian, President of Brown University, we will hear more about him from Mr. Reed, and Dr. David Jorns, President of Eastern Illinois University.

Mr. Reed.

Mr. REED. Thank you very much.

Mr. Chairman, I would first like to thank you for holding the hearing today on this very important topic, and I would especially like to welcome Dr. Vartan Gregorian, the President of Brown University, who is here to testify today. President Gregorian is both a distinguished member of the Rhode Island community and a national leader in educational policy.

It is good to see you, President Gregorian.

I am a strong supporter of Title IX and would not support any efforts to weaken the statute. Since its passage over 20 years ago, Title IX has led to greater opportunities for girls and women to participate in athletics. Indeed, Title IX has shaped in a significant and productive way the face of American education. We do not want to lose this ground.

Efforts to increase athletic opportunities for women at the intercollegiate level have filtered down to the high school and grade school levels, where opportunities for girls to participate in athletics have grown significantly. Today, we will have the opportunity to review the effects of Title IX and compliance activities associated with the Office of Civil Rights at the Department of Education.

I welcome the witnesses here today, and I look forward to hearing their testimony.

Again, I am particularly pleased to see President Gregorian here. He is a major figure in our community.

Chairman MCKEON. Thank you.

We will, in the interest of time, ask the witnesses to summarize their written statements, which will be made a part of the official hearing record. We will go now to using the lights that you see there. When the green light comes on, you have four minutes. When the yellow hits, you have one minute. When the red hits, there is a big hole that opens up . . .

[Laughter.]

Chairman McKeon. Let's hear first from Ms. Cantú.

STATEMENT OF HON. NORMA CANTÚ, ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION

Ms. Cantú. Good morning, Mr. Chairman, and Members of the subcommittee. Although Title IX of the Education Amendments of 1972 passed 23 years ago, there is still much work to be done. I really appreciate the opportunity to visit—that is a Texas phrase; it is a verb—with this subcommittee to discuss what still must be done to fulfill the promise and to make the promise of Title IX a reality.

I have been Assistant Secretary for Civil Rights at the Department of Education for two years now. I appreciate being invited to discuss the role of the Office of Civil Rights in making that promise a reality for all students.

I need to take dead-on, right away, the issue of looking for common ground because I completely agree with the Chairman; that in fact has been the theme that has been driving our Office for Civil Rights, that looking for common ground, looking to serve all students has been very important.

And I recall a conversation in my first year, when the College Football Association came to talk to me about what they saw as tension between men and women, and competition between men and women. And what I urged them that first year that I was in this position, I urged them to look for the similarity and focus on the similarities rather than the differences. Because, together, I urged that they could build a bigger base of support for athletics rather than be divided and have it appear that they could not work together. So I agree that we need to look for the common ground.

What I want to cover today, to summarize, is Title IX, the Department's regulation and policy, what it requires and what it does not require, some misunderstandings and a general description of our approach and enforcement. I want to mention in closing why we enforce Title IX.

It has been mentioned in earlier testimony what the history of Title IX is. Let me just make two points about that history:

> First, Title IX has enjoyed bipartisan support. It was passed in 1972, in the spirit of bipartisanship, to ensure that all people, men and women, were not subject to discrimination.
>
> Second, several times Congress has continued to affirm its commitment to Title IX. It has affirmed that Title IX covers all sports. It has affirmed that Title IX is intended to be enforced, and Congress has specifically rejected any attempts to pull back or to curtail the enforcement of the Title IX.

In the 23 years that has passed, the Department of Education regulated only once, and that was highly visible, involving comments across the country; we received 9,700 comments. And those regulations passed back in 1974 and were signed by President Ford in 1975. Those regulations were submitted to the House Subcommittee on Postsecondary Education, and the House subcommittee held hearings, very visible, lots of participation.

Those regulations, the only ones that we have ever had, became effective in 1975. In the 23 year history of Title IX, the Federal Government has issued policy guidance once, again highly visible. There were more than 700 comments from the public on the policy guidance. And in the spirit of bipartisan support, that guidance was issued and promulgated in 1979.

I recognize as Assistant Secretary that making the promise of Title IX a reality is a complicated task. I tried to summarize what Title IX requires on the two charts at my left, to your right.

[The information follows:]

TITLE IX STANDARDS

1. *Athletic Financial Assistance*

Must be proportionate to participation rates, unless non-discriminatory reasons justify non-proportionality.

2. *Interest and Abilities*

A. Nondiscriminatory participation opportunities provided, as measured by:

- participation numbers that are substantially proportionate to enrollment by gender; or
- history and continuing practice of program expansion for the underrepresented sex; or
- fully and effectively accommodating interests and abilities of the underrepresented sex.

B. Competitive team schedules must equally reflect abilities, as measured by:

- schedules that afford proportionally similar numbers of athletes of both sexes equivalently advanced competitive opportunities; or
- history and continuing practice of upgrading competitive opportunities of the underrepresented sex.

3. *Equivalent Treatment, Benefits and Opportunities*

Determined by examination of 11 factors.

- Equipment and supplies;
- Scheduling of games/practice times;
- Travel/per diem allowances;
- Opportunity to receive coaching and academic tutoring;
- Assignment and compensation of coaches and tutors;
- Provision of locker rooms, practice and competitive facilities;
- Provision of medical and training facilities and services;
- Provision of housing and dining facilities and services;
- Publicity;
- Recruitment of student athletes;
- Provision of support services.

Ms. CANTÚ. As you can see, the standards are detailed, just like the rules of play in sports. In order to ensure fair treatment of players, we have very clear and detailed rules.

I want to focus, though, on the three-part test. You have already heard an allegation that my office follows only the proportionality test. That is absolutely untrue. We have a three-part test, and we use a three-part test. That is the practice that we have followed in the two years I have been here.

I cannot defend the prior administration, but I can speak for mine. It is my absolute practice that each part of the three-part test is independent, should be used, will be used. If there is an instance in a regional office where that is not happening, I want that brought to my attention.

I thank Eastern Illinois and Congressman Hastert for their concerns, but in fact in this administration we do not focus on a one-part test alone.

I want to close by talking about the benefits, but I can reserve that for later questions.

Chairman McKEON. Thank you very much.

[The prepared statement of Ms. Cantú follows:]

STATEMENT OF

NORMA V. CANTÚ
ASSISTANT SECRETARY
FOR
CIVIL RIGHTS
U.S. DEPARTMENT OF EDUCATION

BEFORE THE

SUBCOMMITTEE
ON
POSTSECONDARY EDUCATION, TRAINING
AND
LIFELONG LEARNING

COMMITTEE ON ECONOMIC
AND
EDUCATIONAL OPPORTUNITIES

UNITED STATES HOUSE
OF
REPRESENTATIVES

TUESDAY, MAY 9, 1995

Mr. Chairman and Members of the Subcommittee:

Introduction

Since the passage of Title IX of the Education Amendments of 1972, there have been many gains made in the effort to ensure equal opportunities for all students; however, there is still much work to be done if we are to fulfill the promise of that landmark legislation. I appreciate having the opportunity to discuss the efforts of the United States Department of Education's Office for Civil Rights (OCR) to make that promise a reality for all.

Because this is my first opportunity to testify before this committee, I'd like to begin my remarks with a brief overview of OCR and its law enforcement work. OCR's primary responsibility is to ensure that recipients of Federal financial assistance do not discriminate against students, faculty, or other individuals on the basis of race, color, national origin, sex, disability or age. OCR addresses the real problems of real students by working with recipients to develop strong, educationally-sound remedies to problems of discrimination. We offer assistance to and, when appropriate, conduct investigations at the nation's 16,000 school districts and 3,500 colleges and universities that receive Federal funds.

As OCR moves forward with our enforcement responsibilities, it is committed to an open and meaningful dialogue on issues, such as Title IX, for which it has responsibility. In fact, in my two years as Assistant Secretary, we have met with many, many groups representing numerous constituencies and interests--all in an effort to ensure that we understand the problems that we are addressing from the many perspectives of those who are affected by our work. Aside from our frequent offers of technical assistance and participation at conferences where we hear from our constituents, we have also met with numerous groups to discuss, specifically, the Title IX standards that apply to intercollegiate athletics, and ways to ensure that Title IX enforcement is carried out in ways that are both faithful to the Congressional mandate and fair to all students and schools. **[See Exhibit 1, Title IX Athletics Working Sessions Attendees]**

Overview of Testimony

One of the nation's landmark civil rights laws is Title IX of the Education Amendments of 1972. This law was enacted by the Congress to eliminate sex discrimination in all aspects of American education -- in the classroom, in

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course offerings, in the school workplace, and on the athletic fields. OCR is the sole federal agency charged with the responsibility of enforcing Title IX in the context of athletics, which is considered an integral part of an institution's education program and is, therefore, covered by the Title IX statute.

In seeking to ensure a level playing field for all, OCR's enforcement is faithful to the clear and unequivocal Congressional mandate of nondiscrimination in Title IX: that members of both sexes be provided equal opportunities to participate in athletics. Indeed, OCR's guiding principle in this area--and in other areas of civil rights enforcement--is to ensure that all students are afforded equal opportunities. Title IX is a basic non-discrimination requirement, intended to expand, not limit, opportunities. That is the driving force of OCR's enforcement, which is faithful to the expressed will of Congress, flexible in its dealings with colleges and universities, and fair in its protection of boys and girls.

Today, I will discuss three issues: (1) the need for Title IX--in 1972 and today, (2) OCR's role in the enforcement of this law; and (3) the way in which OCR is working to ensure equality of opportunity for all students. In my comments, I also will address several criticisms of Title IX and OCR's enforcement activities under this law. These arguments--some of which date back more than a decade--have again surfaced, and I appreciate having the opportunity today to address them. They are, briefly:

1. One allegation is that "Title IX enforcement reduces athletic opportunities for men." In fact, Title IX is intended to expand opportunities, not reduce them. Moreover, men's participation in intercollegiate sports has increased since the passage of Title IX, and participation as measured by numbers of men's non-revenue producing sports has increased in the last decade, as well.

2. Another argument that's been made is that "OCR's enforcement of Title IX amounts to an inflexible quota." This is simply not the case. OCR regulations and policy guidance do not mandate statistical balancing as the only way to achieve Title IX compliance.

3. Finally, it has been asserted that "Football is not treated as a unique sport in the enforcement of Title IX." To the contrary, OCR policy guidance mandates that it consider the unique aspects of all sports when it assesses compliance with Title IX. At the same time, no sport is exempt from Title IX. OCR is faithful to these principles in its enforcement of Title IX.

Why Title IX Was and Is Needed

Before discussing Title IX and OCR's enforcement of it in the area of athletics, I'd like to address the real needs of real students that Title IX was designed to remedy--needs that existed in 1972, and needs that exist today. Before its passage, athletic scholarships for women were rare. After winning two swimming gold medals in the 1964 Olympics, Donna de Varona was, in effect, forced to retire at the age of 17; scholarships at colleges for women in swimming did not exist. Meanwhile, her best friend, a fellow gold medalist in swimming, Don Schollander, got a full scholarship to Yale. Even by 1974--two years after the passage of Title IX--there had been little progress: it was estimated that 50,000 men were attending college on athletic scholarships that year, compared with less than 50 women.

This visible and dramatic inequality was not just limited to scholarships. At one large southwestern university, women had 10 sports and a total budget of $200. At a Big Ten school, women received $40,000 out of a $6 million athletic budget. And, at an Atlantic Coast Conference school, women received $30,000 of the $2.2 million committed to intercollegiate athletics.

Consider, in this regard, the story of the women's crew team that won two national championships in 1974. They did it without one cent from their university's athletic department, which gave the men's crew team $35,000 and two full-time coaches. Listen to the words of a member from that women's crew team:

> "We practice at six in the morning so we won't get in the way of the men's team, and also because our volunteer coach works from 9 to 5. To compete in meets we have to borrow boats from other schools. We fund-raise with bake sales, raffles and car washes. We even resorted to a rowing marathon. We set up a swimming pool in front of the student union and rowed in two-hour shifts, 24 hours a day for one whole week. People came by and threw change into the pool. It was like begging. But the money had to be raised somehow. The university wasn't going to give it to us and we wanted to compete."

Even today, we are finding in our cases that women are being denied comparable opportunities and necessary operating, recruiting, and scholarship dollars. In addition, in recent years, OCR has investigated cases in which a school provided each of its men's teams separate, well-furnished locker rooms, while all women's teams were forced to use the same one locker room. At this

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same school, men could use weight training equipment at no charge; women, on the other hand, were required to pay for this opportunity. And, in another case, a women's crew team was provided shells designed for men that were too heavy to use in practice or competitions. At that same school, there was no locker room at the boathouse available to women when men and women competed on weekends.

The story is not entirely anecdotal, however. Let us look at the statistics reflecting the participation of women at NCAA member institutions in 1971, the year before Title IX's passage, and in 1994 **[see Exhibit 2, Intercollegiate Athletics Participation by Men & Women in NCAA Member Institutions].** Two observations are apparent: 1. Since the passage of Title IX, women have made significant strides in their participation in intercollegiate athletics. 2. Despite those gains, there is still much work to be done if the promise of Title IX is to be fulfilled.

Senator Hatch has perhaps best captured the essence of the meaning and promise of Title IX. In 1984, on the Senate floor, he observed that there were few, if any, Senators who did not want "Title IX implemented so as to continue to encourage women throughout America to develop into Olympic athletes, to develop in educational activities or in any other way within our schools of higher education."

Indeed, in the discussions surrounding Title IX, we should not lose sight of the importance of providing equal opportunity to participate in athletics. There are many benefits to participation. According to the Institute for Athletics and Education, girls who participate in sports are three times more likely to graduate from high school, 80 percent less likely to have an unwanted pregnancy, and 92 percent less likely to use drugs. Also, the health benefits are extensive. For example, studies report that women who participate in sports lower their risk of breast cancer. There are psychological benefits, as well. Women athletes have a higher level of self-esteem and confidence and a lower rate of depression than non-athletes. (Colton and Gore, Risk Resiliency and Resistance Current Research on Adolescent Girls, Ms Foundation, 1991) The availability of athletic scholarships dramatically increases the ability of athletes to pursue a college education and to select from a greater range of institutions. Eventually, this has implications for future employability of persons who will go on to become productive members of our society.

And then there are the important values we learn from participation in sports -- teamwork, standards, leadership, discipline, work ethics, self sacrifice, pride in accomplishment, strength of character. These values are as important to women as they are to men.

A number of former women athletes point to communication learned in sports competition as key to their upward career mobility. Ninety-three percent of women in one study agreed that women who participated in sports would be better able to compete successfully later in life. Another interesting statistic -- 80 percent of women who were identified as key leaders in their Fortune 500 companies had sports backgrounds.

Perhaps the value of non-discrimination in sports, as guaranteed by Title IX, is best exemplified by a letter I recently received from a woman in New Jersey. She said:

> My concerns are not self directed, for my opportunity has long since passed. My concerns are not for my daughter, who had a very limited opportunity. My concerns are for my granddaughters and other young females whose future I have hope for.
>
> As a child, I loved athletics and physical activity. I was talented, but my talent was not appreciated or approved of by most . . . I watched my older and younger brothers compete on school teams. It didn't matter that in the neighborhood pick-up games, I was selected before my brothers. Society dictated that I should watch, and they should compete. So at home in the backyard, I would catch as my brother worked on his curve ball, I would shag flies as he developed his batting prowess and as I recall, I frequently served as his tackling dummy.
>
> . . . The brother I caught for, and shagged for, and served as a tackling dummy for, went on to Georgetown University on a full athletic grant. He later became Vice President of a large banking firm . . . .
>
> So, while I rode in the backseat on the bus of opportunity during my lifetime, I want my daughter's daughter and her peers to be able to select a seat based on their abilities and their willingness to work. Don't deny them the things I dreamed of.

Title IX and Department of Education Regulations and Policy

To ensure that all people, regardless of sex, get the opportunity to "select a seat based on their abilities and their willingness to work," and in a spirit of bipartisanship, Congress passed Title IX in 1972. Following the passage of Title IX, Congress has on several occasions reaffirmed the non-discrimination guarantee in the context of athletics. Consistently, Congress has expressed the view that intercollegiate sports, including revenue producing sports, are within the coverage of Title IX, just as Congress has rejected attempts to curtail the enforcement of Title IX. **[See Exhibit 3, History of Title IX Legislation, Regulations and Policy Interpretation.]** Notably, 21 years ago, Congress considered and rejected an amendment to the Education Amendments of 1972 that would have exempted revenue-producing sports from coverage under Title IX. Instead, Congress adopted a compromise amendment that directed the Department of Education's predecessor agency, the Department of Health, Education, and Welfare (HEW), to publish proposed Title IX regulations that contained -- and I am quoting the statutory language -- "reasonable provisions considering the nature of particular sports."

On June 20, 1974, HEW published proposed regulations, which included specific provisions for college athletics. In response to the notice of the proposed regulations, HEW received over 9700 comments, which were considered prior to publication of the final regulations.

President Ford signed the Title IX regulations on May 27, 1975. They were submitted to Congress for review pursuant to the General Education Provisions Act, and during the review, the House Subcommittee on Postsecondary Education conducted hearings. The regulations, which became effective on July 21, 1975, established a three-year transition period to give secondary and postsecondary institutions sufficient time to comply with the equal athletic opportunity requirements--a period that expired in 1978.

To complement the regulations, OCR issued a Title IX policy interpretation to provide colleges and universities with more detailed guidance on how to comply with the law. This policy interpretation was issued on December 11, 1979, after OCR reviewed more than 700 comments on a proposed interpretation issued a year earlier, and after extensive consultation with educators, athletic directors, coaches, athletic associations, civil rights groups, and education organizations. OCR also visited several colleges to obtain more information on their athletic programs and to assess how the policy would apply in actual practice to the athletic programs at individual campuses.

The Title IX policy interpretation, along with the Title IX statute and implementing regulations, have governed OCR's enforcement in this area for almost two decades, enjoying the bipartisan support of Congress and full support of the courts.

Title IX Requirements: What They Do and Do Not Mean

The 1979 policy interpretation clarifies responsibilities under Title IX in three basic areas:

- athletic financial assistance;
- athletic benefits and opportunities; and
- accommodation of student interests and abilities.

The Title IX regulations require that the total amount of athletic financial assistance awarded to men and women be proportionate to their respective participation rates in intercollegiate athletic programs. However, disparities in awarding financial assistance may be justified by legitimate, nondiscriminatory factors. For instance, in a college or university beginning a new athletic program, institutional officials may decide it is necessary to spread the increase in scholarships over a period of time by awarding fewer scholarships during the first few years than would be necessary to create immediate proportionality between male and female athletes.

With respect to the second area -- athletic benefits and opportunities -- the compliance standard is that male and female athletes should receive equivalent benefits, treatment, services, and opportunities. Under this standard, identical benefits and opportunities are not required. Differences that result from nondiscriminatory factors are permitted. Generally, these differences will be the result of unique aspects of particular sports, such as the nature or replacement of equipment and maintenance of facilities required for competition.

Those who have argued OCR does not consider the unique aspects of football programs in its enforcement of Title IX are, simply, misinformed. For example, OCR has found that the size of the football team and the nature of the sport justify an apparent imbalance that favors the football team in the provision of medical and training facilities and services. Similarly, OCR has found a school to be in compliance with Title IX where all teams had comparable equipment replacement schedules--with the exception of sport-specific equipment in football. In that case, despite the fact that football appeared to have a higher equipment replacement rate, at least with respect to helmets and other safety equipment, OCR found no violation in terms of the provision of equipment and supplies.

Also, some legitimate disparities may be related to special circumstances of a temporary nature. For example, disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. A violation will exist only if disparities result in the denial of equal opportunity to male or female athletes. In short, OCR's approach allows institutions flexibility in conducting their athletic programs in recognition that each athletic program differs.

With respect to accommodating student interests and abilities -- the third area -- a recipient institution will be found in compliance with Title IX if it provides men and women both (1) nondiscriminatory participation opportunities, and (2) competitive team schedules which equally reflect their abilities. A school will be found to provide nondiscriminatory participation opportunities if it meets any part of a three-part test: (1) by providing athletic participation opportunities in numbers that are substantially proportionate to enrollment by gender; or (2) by establishing a history and continuing practice of program expansion for members of the underrepresented sex; or (3) by fully and effectively accommodating the interests and abilities of the underrepresented sex. No one part of the three-part test is preferred by OCR or used exclusively by OCR over another as a method of ensuring compliance with the law. Rather, the three-part test furnishes three individual avenues for compliance.

Several important points guide OCR's enforcement of Title IX in the area of athletics. First, Federal courts across the country have consistently recognized that the standards by which OCR assesses compliance with Title IX are faithful to the will of Congress. Indeed, courts have observed that OCR's policy standards draw their essence from Title IX. Moreover, OCR's guidance in this area of Title IX enforcement:

-does not mandate numerical quotas;
-does not mandate statistical balancing;
-does not require that all teams be coeducational;
-does not require parallel teams, or that the same number of teams be provided for men and women;
-does not require that schools spend equal amounts of money on members of each sex; and
-does not mandate the sports that schools must offer.

Instead, OCR's guidance:

- -does avoid any absolute requirement of numerical proportionality between the numbers of sports opportunities offered to men and women and the numbers of students, by sex;
- -does recognize that different expenditures on men's and women's sports may be permissible; and
- -does expressly recognize and factor into its analysis the unique nature of particular sports.

Indeed, the flexibility with which OCR carries out its enforcement of Title IX in the area of athletics is perhaps most evident when considering two, often overlooked, points. First, when a school is found to be operating in violation of this anti-discrimination statute, it is not required to achieve compliance overnight. OCR, and the courts, have demonstrated flexibility and reasonableness in the time allowed an institution to achieve compliance with Title IX. Second, and perhaps most important, OCR does not mandate that a school offer an athletics program. OCR generally does not substitute its views for the decisions of an individual institution as to which sports to offer to its male and female students and at what competitive level. OCR's role is to ensure that institutions comply with Title IX, and institutions can achieve compliance in many different ways.

Of course, I have heard the argument, as you may have, that because of budgetary constraints, compliance with Title IX means, in effect, that men's sports must be cut. In the past several years, a number of colleges and universities have experienced budgetary constraints. As a result, some have eliminated or "capped" men's teams, such as wrestling, swimming, and gymnastics.

OCR does not advocate eliminating or "capping" teams as a means for achieving compliance with the law. Nor has OCR required that men's teams be cut in order for institutions to come into compliance with Title IX. **[See Exhibit 4, Title IX Athletics: OCR Enforcement Activities (FY 1989-94)].** OCR's preference is that there be equitable athletic opportunities for all students. However, individual institutions must make their own decisions about their athletics programs, including the distribution of athletic opportunities within the men's program and within the women's program. Indeed, the idea that "if women gain, men must lose" presents a false dichotomy. The federal court in the recent decision of Cohen v. Brown quoted one of the expert witnesses who stated:

> I believe that philosophically in any case where you have a previously disadvantaged population that you're trying to bring up to snuff to the advantaged population, that it's a bad idea to bring the advantaged population down to the level of the disadvantaged population.

In fact, looking at the "big picture" in intercollegiate sports participation, the number of male college athletes increased since 1971, one year before the passage of Title IX. Moreover, they still account for 64 percent of all college athletes at NCAA institutions. **[See Exhibit 2, Intercollegiate Athletics Participation by Men & Women in NCAA Member Institutions].** During the past decade, as well, there has been increased participation by men in sports other than football and basketball, i.e., or in the "non-revenue producing sports." **[See Exhibit 3, Participation in Men's NCAA Sports Other than Football and Basketball].**

Conclusion

Title IX has helped girls and women realize more of the benefits and educational opportunities afforded by athletic participation. Let us not lose sight of the fact that a year before Title IX became law, only 32,000 women participated in intercollegiate athletics. Today, that number is around 105,000. Women are participating in lacrosse, soccer, and ice hockey, in addition to the traditional sports. And, contrary to some popular thought, men's athletic participation has not decreased as institutions have moved to increase athletic opportunities for women.

While I applaud the progress that has been made, the task of providing equal athletic opportunity remains unfinished. OCR continues to find serious violations in many of its cases, as do the courts, which are ruling with increasing frequency that women are not receiving equal athletic opportunity. OCR will continue to respond to complaints, and it also will continue to work actively with many schools and associations to address problems and issues before they become the subject of complaints.

Rest assured, we will continue to enforce Title IX fairly and to help institutions comply with the law. Many colleges and universities are striving to provide equal athletic opportunity, and we will work with them to find creative and innovative practical approaches to ending sex discrimination in intercollegiate athletics.

Mr. Chairman, there is no place for discrimination in sports. Discrimination goes against the very grain of what competition is all about. In

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sports we encourage and reward performance. In our history, sports have been the great equalizer, crossing all artificial social and class distinctions and barriers. We should showcase sports as a model of equality in American society.

The Department of Education considers these hearings a significant step in clarifying the way in which, since its inception, Title IX in the area of athletics has been enforced, just as it is a significant step toward highlighting the need for equal athletic opportunity for all students. With your help we will make greater strides in establishing a level playing field for all who wish to take advantage of athletic opportunity.

Thank You

Title IX--Athletics Working Sessions Attendees

Athletics Associations and Interest Groups

American Volleyball Coaches Association

Center for the Study of Sport in Society

College Football Association

Council of Collegiate Women Athletic Administrators

Fund for the Feminist Majority--Athletics Project

National Association of Girls and Women in Sport

National Coalition for Women and Girls in Education

National Collegiate Athletics Association

National Education Association

National Association of Intercollegiate Athletics

National Federation of State High School Associations

National Softball Coaches Association

Trial Lawyers for Public Justice

Women's Basketball Coaches Association

Athletic Conferences

Big Ten

Gulf South

Southern

Colleges and Universities

Southern Illinois University

University of Arkansas

University of Iowa

University of Wisconsin, Madison

Congress

Staffer, House Subcommittee on Commerce, Consumer Protection and Competitiveness

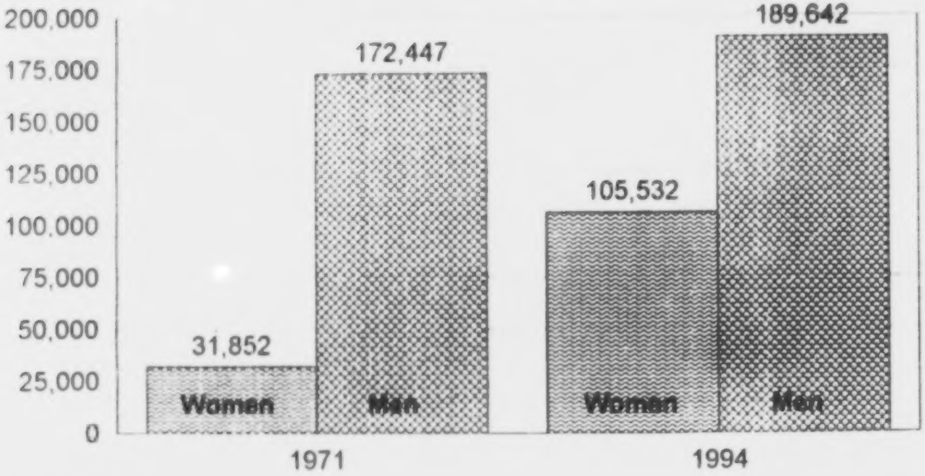
Other

Private Law Firm Attorneys (3)

U.S. Department of Justice

Exhibit 1

Intercollegiate Athletics Participation by Men & Women in NCAA Member Institutions



Source: NCAA

Exhibit 2

TITLE IX ATHLETICS

History of Title IX Legislation, Regulation and Policy Interpretation

1972	Congress enacts Title IX	Prohibits sex discrimination in any education program or activity receiving Federal financial assistance
1974	"Javits Amendment" enacted. Amendment to exempt revenue-producing sports from Title IX rejected	HEW must issue Title IX regulation including "with respect to intercollegiate athletic activities, reasonable provisions considering the nature of particular sports"
1975	Bills to alter Title IX athletics coverage die in committee.	House bill (H.R. 8394) proposes to use sports revenues first to offset cost of that sport, then to support other sports Senate bill (S. 2106) proposes to exclude revenue-producing sports from Title IX coverage
1975	HEW issues final Title IX regulation [Signed by President Ford]	Includes provisions prohibiting sex discrimination in athletics and establishes a three year period to comply
1975	Congress reviews Title IX regulations and does not disapprove them	Rejects concurrent resolutions disapproving: (1) the entire regulation (S. Con. Res. 46; H. Con. Res. 310) (2) the intercollegiate athletics provisions (H. Con. Res. 311) (3) application of regulations to intercollegiate athletics (S. Con. Res. 52)
1975 and 1977	Senate refuses to act on bills to curtail Title IX enforcement	S. 2146 introduced on 7/21/75 to prohibit enforcement of Title IX athletics regulation to athletics where participation in those athletic activities was not a required part of the educational institution's curriculum. S. 2146 reintroduced as S. 535 on 1/31/77
1978	HEW issues proposed policy "Title IX and Intercollegiate Athletics" for notice and comment.	Presumption of compliance based on substantially equal average per capita expenditures for men and women athletes and future expansion of opportunity and participation for women
1979	HEW issues final policy interpretation on "Title IX and Intercollegiate Athletics."	Rather than relying exclusively on presumption of compliance standard, final policy focuses on institution's obligation to provide equal opportunity and details the factors to be considered in assessing actual compliance

Exhibit 3

HISTORY OF TITLE IX LEGISLATION

1972	Congress enacts Title IX.
1974	"Javits Amendment" enacted. Amendment to exempt revenue-producing sports from Title IX rejected.
1975	Bills to alter Title IX athletics coverage die in committee.
1975	HEW issues final Title IX regulation [Signed by President Ford].
1975	Congress reviews Title IX regulations and does not disapprove them.
1975 and 1977	Senate refuses to act on bills to curtail Title IX enforcement.
1978	HEW issues proposed policy "Title IX and Intercollegiate Athletics" for notice and comment.
1979	HEW issues final policy interpretation on "Title IX and Intercollegiate Athletics."

Exhibit 3a

Title IX Athletics
OCR Enforcement Activities

FY 1989 - 1994

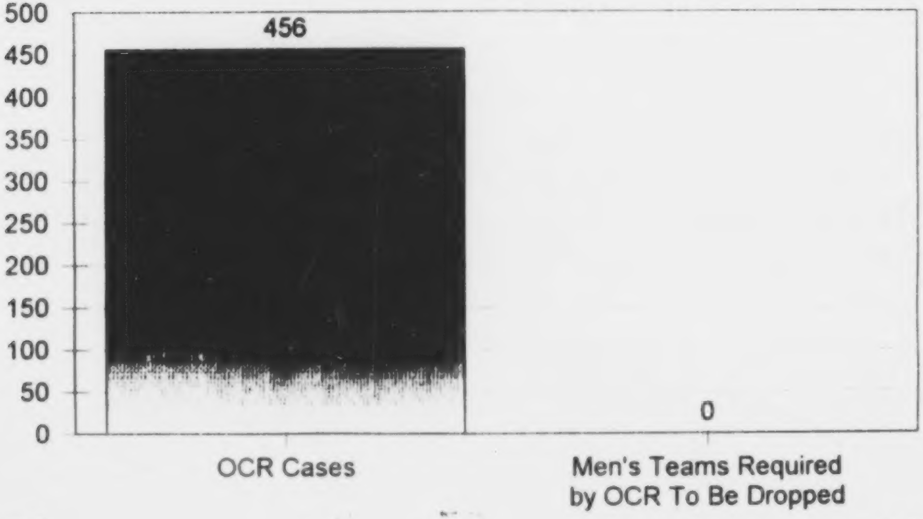


Exhibit 4

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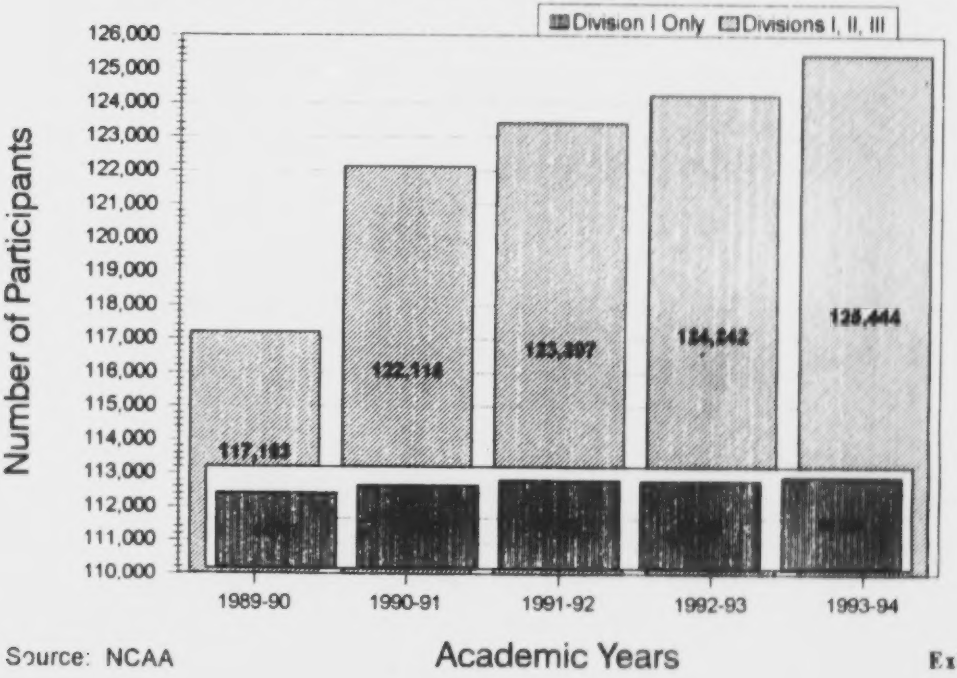
Number of Male Participants in Sports Other Than Football and Basketball



Source: NCAA

Exhibit 5

U.S. Department of Education
Office for Civil Rights
Title IX Athletics Receipts/Starts

FY 1994 Summary

	COMPLAINTS	COMPLIANCE REVIEWS
Elementary and Secondary	64	10
Postsecondary	52	10
Others	6	0
TOTALS	122	20

Office for Civil Rights
48 Cases Received/Initiated in ACIMS

FY 1994

Case#	Recipient Name	St	Received	Close Date	Close Code	Monitor	Issue1	Issue2	Issue3	Issue4	Issue5	Issue6
[illegible]	SHAMONG	NJ	10/18/93	/ /		/ /	96202	96103				
[illegible]	NYS	NY	10/15/93	/ /		/ /	96101	96109				
[illegible]	DEPOSIT	NY	11/19/93	/ /		/ /	96109					
[illegible]	FAIRFAX	VA	10/18/93	/ /		/ /	96100					
[illegible]	UNIV OF	TN	10/18/93	/ /		/ /	96101	96104	96112			
[illegible]	JACKSONVILL	AL	11/01/93	/ /		/ /	93301	93302	96102	96108	96111	
[illegible]	UNIV OF	TN	11/08/93	/ /		/ /	96102	96104	96106			
[illegible]	RACINE	WI	10/18/93	/ /		/ /	96104	96105	96106			
[illegible]	EDWARDSVILL	IL	11/05/93	/ /		/ /	96103	96104	96109	96107	96113	96108
[illegible]	OBERLIN	OH	11/04/93	/ /		/ /	96104	96106	96109	96111	96101	
[illegible]	SAN ANTONIO	TX	10/01/93	/ /		/ /	96103					
[illegible]	CORPUS	TX	11/02/93	/ /		/ /	96103	96105	96109	96111	96104	
[illegible]	HOUSTON ISD	TX	11/23/93	/ /		/ /	97301	96104	96108			
[illegible]	TARLETON	TX	11/22/93	/ /		/ /	93101	93102	94101	97104	96102	
[illegible]	MINDEN P S	NE	11/15/93	/ /		/ /	96107					
[illegible]	ROCKY FORD	CO	10/07/93	/ /		/ /	96103					
[illegible]	COVINA VLY	CA	10/29/93	/ /		/ /	92402	92403	92404	92405	93201	96114
[illegible]	RIM OF THE	CA	11/16/93	/ /		/ /	96100					
[illegible]	MOUNT SAN	CA	10/27/93	/ /		/ /	93201	96114				
[illegible]	GEORGE FOX	OR	11/09/93	11/29/93	01	/ /	96199					
[illegible]	JUDSON	OR	11/09/93	/ /		/ /	96199					
[illegible]	LEWIS &	OR	11/09/93	/ /		/ /	96199					
[illegible]	LINFIELD	OR	11/09/93	/ /		/ /	96199					
[illegible]	OREGON	OR	11/09/93	/ /		/ /	96199					
[illegible]	PACIFIC	OR	11/09/93	/ /		/ /	96199					
[illegible]	UNIVERSITY	OR	11/09/93	/ /		/ /	96199					
[illegible]	UNIVERSITY	OR	11/09/93	/ /		/ /	96199					
[illegible]	WARNER	OR	11/09/93	/ /		/ /	96199					
[illegible]	WESTERN	OR	11/09/93	/ /		/ /	96199					
[illegible]	WESTERN	OR	11/09/93	/ /		/ /	96199					
[illegible]	WILLAMETTE	OR	11/09/93	/ /		/ /	96199					
[illegible]	CENTRAL	WA	11/09/93	/ /		/ /	96199					
[illegible]	EASTERN	WA	11/09/93	/ /		/ /	96199					
[illegible]	GONZAGA	WA	11/09/93	/ /		/ /	96199					
[illegible]	HERITAGE	WA	11/09/93	/ /		/ /	96199					
[illegible]	NORTHWEST	WA	11/09/93	/ /		/ /	96199					
[illegible]	PACIFIC	WA	11/09/93	/ /		/ /	96199					

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Office for Civil Rights
48 Cases Received/Initiated in ACIMS

FY 1994

Case #	Recipient Name	St	Received	Closure Date	Closure Code	Monitor	Issue1	Issue2	Issue3	Issue4	Issue5	Issue6
[illegible]	SEATTLE	WA	11/09/93	/ /		/ /	86199					
[illegible]	SEATTLE	WA	11/09/93	/ /		/ /	86199					
[illegible]	ST	WA	11/09/93	/ /		/ /	86199					
[illegible]	UNIV OF	WA	11/09/93	/ /		/ /	86199					
[illegible]	UNIV OF	WA	11/09/93	/ /		/ /	86199					
[illegible]	WALLA WALLA	WA	11/09/93	/ /		/ /	86199					
[illegible]	WASHINGTON	WA	11/09/93	/ /		/ /	86199					
[illegible]	WESTERN	WA	11/09/93	/ /		/ /	86199					
[illegible]	WHITWORTH	WA	11/09/93	/ /		/ /	86199					
[illegible]	EVERGREEN	WA	11/09/93	/ /		/ /	86199					
[illegible]	AIA	[illegible]	[illegible]	/ /		/ /	86103					

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8/04/95

U.S. Department of Education
Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket_#	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
[illegible]	UMASS	MA	04/04/94							
								10	S6101	athletic recruitment
								10	S6102	athletic financial assistance/scholarships
								10	S6103	interests and abilities
								10	S6113	publicity
[illegible]	NORTHEASTERN	MA	04/25/94	07/15/94		07/15/94				
							36	10	S6113	publicity
[illegible]	BOSTON UNIV	MA	05/05/94	06/24/94		06/24/94				
							29	10	S6101	athletic recruitment
							29	10	S6102	athletic financial assistance/scholarships
							29	10	S6103	interests and abilities
[illegible]	UNIV	CT	06/03/93	11/04/94	06/01/95					
							33	10	S6103	interests and abilities
[illegible]	TOWN OF	MA	04/25/94	06/02/94		06/02/94				
							19	10	S6113	publicity
[illegible]	BOSTON UNIV	MA	07/07/94							
								10	S6100	Athletics
[illegible]	UNIV OF NH	NH	06/28/94							
								10	S6100	Athletics
[illegible]	DEPOSIT C SD	NY	11/15/93	04/01/94		04/01/94				
							14	19	S6109	opportunity to receive coaching
[illegible]	SEAFORD HIGH	NY	05/11/94	06/06/94		06/06/94				
							39	10	S6100	Athletics
							39	10	S6107	scheduling
							39	16	S6108	assignment and training of coaching staff
							39	10	S6109	opportunity to receive coaching
[illegible]	FAIRFAX COUNTY	VA	10/19/93	02/10/94		02/10/94				
							39	10	S6100	Athletics
[illegible]	NORFOLK	VA	09/09/94							

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Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SR	Issue	
								10	56100	Athletics
[illegible]	UNIVERSITY OF	PA	05/26/94							
								10	56100	Athletics
[illegible]	LOYOLA	MD	04/20/94	02/15/95	08/01/95					
							30	10	56100	Athletics
[illegible]	BALDWIN	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	MOBILE COUNTY	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	MONTGOMERY	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	JEFFERSON	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	HUNTSVILLE	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	MADISON	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	SHELBY COUNTY	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	LIMESTONE	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	JACKSON	AL	12/13/93	06/01/94		06/01/94				
							36	10	56103	interests and abilities
[illegible]	MORGAN	AL	12/14/93	02/14/94		02/14/94				
							19	10	56202	criteria for participation
							19	10	56103	interests and abilities
[illegible]	MONROE	GA	03/24/94	06/09/94	09/01/94					
								10	56102	athletic financial assistance/scholarships
								10	56104	athletic equipment, supplies and facilities
								10	56109	opportunity to receive coaching

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Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
								10	S7101	disciplinary criteria
										Have not identified issue set
[illegible]	TN SECONDARY	TN	01 24 94	02 07 94		02 07 94				
							19	10	S6103	interests and abilities
							19	10	S6106	support services
[illegible]	DECATUR CITY	AL	02 09 94	05 17 94		05 17 94				
							30	10	S6103	interests and abilities
							34	10	S6202	criteria for participation
[illegible]	ORANGE COUNTY	FL	02 18 94							
								10	S6102	athletic financial assistance/scholarships
								10	S6103	interests and abilities
								10	S6104	athletic equipment, supplies and facilities
								10	S6105	medical and training facilities and services
								10	S6106	support services
								10	S6107	scheduling
								10	S6112	athletic housing and dining facilities and services
[illegible]	TUSCALOOSA	AL	03 07 94	04 15 94		04 15 94				
							35	10	S6102	athletic financial assistance/scholarships
							38	10	S6103	interests and abilities
							35	10	S6104	athletic equipment, supplies and facilities
[illegible]	SEMINOLE	FL	03 24 94							
								10	S6108	assignment and training of coaching staff
								10	E1500	Recruitment
								10	E3401	retaliation
[illegible]	HILLSBOROUGH	FL	04 11 94	06 15 94	09 30 94					
							37	10	S6103	interests and abilities
[illegible]	JEFFERSON	AL	06 17 94	11 07 94	04 28 95					
							37	10	S6104	athletic equipment, supplies and facilities
							37	10	S6107	scheduling

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Office for Civil Rights
94 Athletics Cases Received/Initiated in [illegible]
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SR	Issue	
							37	10	56109	opportunity to receive coaching
[illegible]	UNIV OF	TN	10/18/93	04/20/95	09/01/95					
							37	10	56101	athletic recruitment
							37	10	56104	athletic equipment, supplies and facilities
							37	10	56112	athletic housing and dining facilities and services
[illegible]	JACKSONVILLE	AL	11/01/93							
								10	53301	availability of equipment
								10	53302	condition of facilities and equipment
								10	56102	athletic financial assistance scholarships
								10	56108	assignment and training of coaching staff
								10	56111	travel and per diem
[illegible]	UNIVERSITY OF	FL	12/06/93							
								10	56104	athletic equipment, supplies and facilities
								10	56103	interests and abilities
								10	56102	athletic financial assistance scholarships
								10	56112	athletic housing and dining facilities and services
								10	56113	publicity
								10	56105	medical and training facilities and services
[illegible]	FAULKNER	AL	04/06/94							
								10	56101	athletic recruitment
								10	56109	opportunity to receive coaching
[illegible]	COASTAL	SC	08/17/94	09/02/94		09/02/94				
							39	10	56100	Athletics
[illegible]	TREVECCA	TN	08/22/94							
								10	56101	athletic recruitment
								10	56102	athletic financial assistance scholarships
								10	56104	athletic equipment, supplies and facilities
								10	56199	other athletic issue
[illegible]	HOUSTON	GA	03/31/94	07/27/94	12/15/94					

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Office for Civil Rights
94 Athletics Cases Received/Initiated in [illegible]
in FY 1994

Docket #	Recipient Name	St	Received	Resolved	Monitor	No Action	RP	SB	Issue	
							[illegible]	10	[illegible]	interests and abilities
							[illegible]	10	[illegible]	athletic equipment, supplies and facilities
							[illegible]	10	[illegible]	assignment and training of coaching staff
							[illegible]	10	[illegible]	opportunity to receive coaching
							[illegible]	10	[illegible]	other athletic issue
[illegible]	LAWRENCE	[illegible]	[illegible]							
								[illegible]	[illegible]	interests and abilities
								[illegible]	[illegible]	athletic equipment, supplies and facilities
								[illegible]	[illegible]	medical and training facilities and services
								[illegible]	[illegible]	scheduling
								[illegible]	[illegible]	assignment and training of coaching staff
								[illegible]	[illegible]	travel and per diem
								[illegible]	[illegible]	athletic housing and dining facilities and services
[illegible]	JACKSONVILLE	[illegible]	[illegible]							
								[illegible]	[illegible]	athletic recruitment
								[illegible]	[illegible]	athletic financial assistance/scholarships
								[illegible]	[illegible]	interests and abilities
								[illegible]	[illegible]	athletic equipment, supplies and facilities
								[illegible]	[illegible]	medical and training facilities and services
								[illegible]	[illegible]	support services
								[illegible]	[illegible]	scheduling
								[illegible]	[illegible]	assignment and training of coaching staff
								[illegible]	[illegible]	opportunity to receive coaching
								[illegible]	[illegible]	academic tutoring
[illegible]	CHARLESTON	[illegible]	[illegible]							
								[illegible]	[illegible]	athletic recruitment
								[illegible]	[illegible]	athletic financial assistance/scholarships
								[illegible]	[illegible]	interests and abilities

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Office for Civil Rights
IX Athletics Cases Received/Initiated in CIS
in FY 1994

Docket #	Recipient Name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
								10	56104	athletic equipment, supplies and facilities
								10	56105	medical and training facilities and services
								10	56107	scheduling
								10	56108	assignment and training of coaching staff
								10	56109	opportunity to receive coaching
								10	56110	academic tutoring
[illegible]	RACINE SCHOOL	WI	[illegible]	[illegible]	[illegible]					
							37	10	56104	athletic equipment, supplies and facilities
							37	10	56105	medical and training facilities and services
							37	10	56106	support services
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					
							27	10	56104	athletic equipment, supplies and facilities
							27	10	56109	opportunity to receive coaching
							27	10	56107	scheduling
							27	10	56113	publicity
							27	10	56108	assignment and training of coaching staff
							27	10	56111	travel and per diem
							27	10	13401	retaliation
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]				
							38	10	56109	opportunity to receive coaching
							38	10	56108	assignment and training of coaching staff
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]				
							38	10	56100	Athletics
							38	10	56104	athletic equipment, supplies and facilities
							38	10	56113	publicity
							38	10	56111	travel and per diem
							38	10	56107	scheduling
							38	10	56105	medical and training facilities and services

Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
[illegible]	OBERLIN	OH	11 04 93	11 16 94	01 [illegible] 95					
							37	10	S6104	athletic equipment, supplies and facilities
							37	10	S6106	support services
							37	10	S6109	opportunity to receive coaching
							37	10	S6111	travel and per diem
[illegible]	MOORHEAD	MN	04 14 94	09 13 94	01 02 95					
							37	10	S6103	interests and abilities
[illegible]	UNIVERSITY OF	MN	09 30 94							
								10	S6101	athletic recruitment
								10	S6103	interests and abilities
								10	S6105	medical and training facilities and services
								10	S6108	assignment and training of coaching staff
								10	S6111	travel and per diem
								10	S6112	athletic housing and dining facilities and services
								10	S6113	publicity
[illegible]	SAN ANTONIO ISD	TX	10 01 93	04 12 94	08 01 94					
							37	10	S6103	interests and abilities
[illegible]	CORPUS CHRISTI	TX	11 02 93	05 20 94	08 15 94					
							37	10	S6103	interests and abilities
							37	10	S6105	medical and training facilities and services
							37	10	S6109	opportunity to receive coaching
							37	10	S6111	travel and per diem
							37	10	S6104	athletic equipment, supplies and facilities
[illegible]	HOUSTON ISD	TX	11 23 93	[illegible] 14 94	09 30 94	02 10 95				
							37	10	S6104	athletic equipment, supplies and facilities
							37	10	S6108	assignment and training of coaching staff
[illegible]	KINGSVILLE ISD	TX	[illegible] 15 94	08 11 94						
							37	10	S6104	athletic equipment, supplies and facilities
							37	10	S6105	medical and training facilities and services

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[illegible]

Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
							37	10	S6103	interests and abilities
[illegible]	VICTORIA ISD	TX	05/22/94	08/31/94	10/14/94					
							37	10	S6104	athletic equipment, supplies and facilities
							37	10	S6105	medical and training facilities and services
							37	10	S6107	scheduling
							37	10	S6108	assignment and training of coaching staff
							37	10	S6109	opportunity to receive coaching
							37	10	S6111	travel and per diem
[illegible]	AMITE COUNTY	MS	05/23/94	08/04/94		08/04/94				
							20	01	S2303	placement
							20	01	S5303	distribution and quality of financial assistance
							20	01	S8501	application procedures process for obtaining funds
							20	01	S2402	evaluation classification
							20	01	E4101	salary
							20	01	E3402	harassment
							20	01	S1202	program accessibility
							20	01	S2403	placement referral
							20	01	S2301	identification
							20	01	S2302	evaluation
							20	01	S1301	criteria for selection
							20	01	S1302	selection process and procedures
							20	01	E1000	HIRE-II
							20	01	E3102	promotion process and procedures
							20	01	E3201	criteria
							20	01	E3202	process and procedures
							20	01	E1301	criteria for selection
							20	01	E1302	selection process and procedures
							20	01	E1501	contracts

[illegible]

[illegible]
Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
							20	01	E2102	assignment process and procedures
							20	01	S2499	other assignment of students with impairments issue
							20	01	S6104	athletic equipment, supplies and facilities
							20	10	S6104	athletic equipment, supplies and facilities
							20	01	S8199	other informational requirements issue
[illegible]	DENTON ISD	TX	08/31/94							
								10	S6109	opportunity to receive coaching
								10	S6104	athletic equipment, supplies and facilities
[illegible]	DENTON ISD	TX	09/12/94							
								10	S6109	opportunity to receive coaching
								10	S6104	athletic equipment, supplies and facilities
								10	S6111	travel and per diem
								10	S6107	scheduling
[illegible]	TARLETON STATE	TX	11/22/93	12/20/93		12/20/93				
							20	10	E3101	criteria for promotion
							20	10	E3102	promotion process and procedures
							20	10	S6102	athletic financial assistance/scholarships
[illegible]	MINDEN PUBLIC	NE	11/15/93	06/30/94		06/30/94				
							34	10	S6107	scheduling
[illegible]	FREMONT PUBLIC	NE	04/14/94							
								10	S6103	interests and abilities
								10	S6104	athletic equipment, supplies and facilities
								10	S6107	scheduling
								10	S6113	publicity
[illegible]	WESTSIDE	NE	05/20/94	06/29/94		06/29/94				
							40	05	S6114	Denial of Participation
							40	10	S6114	Denial of Participation
							40	19	S6114	Denial of Participation
[illegible]	OLATHE USD	KS	06/07/94	09/06/94		09/06/94				

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U.S. Department of Education
Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
							41	02	56103	interests and abilities
							41	19	56103	interests and abilities
							41	02	56107	scheduling
[illegible]	TRANSYLVANIA	KY	05/26/94	09/19/94	/ /	09/19/94				
							20	10	56100	Athletics
							20	10	F3401	retaliation
							20	10	51301	criteria for selection
[illegible]	COFFEYVILLE	KS	08/25/94		/ /	/ /				
								10	56101	athletic recruitment
								10	56102	athletic financial assistance/scholarships
								10	56103	interests and abilities
								10	56104	athletic equipment, supplies and facilities
								10	56105	medical and training facilities and services
								10	56106	support services
								10	56107	scheduling
								10	56108	assignment and training of coaching staff
								10	56109	opportunity to receive coaching
								10	55299	other counseling or tutoring issue
								10	56111	travel and per diem
								10	56112	athletic housing and dining facilities and services
								10	56113	publicity
[illegible]	NATL	KS	10/01/93	10/19/93		10/19/93				
							20	10	56102	athletic financial assistance/scholarships
							20	10	56106	support services
							20	10	56000	EXTRACURRICULAR ACTIVITIES
							20	10	56199	other athletic issue
[illegible]	KY HIGH SCHOOL	KY	08/11/94	09/21/94	/ /	09/21/94				
							20	10	56103	interests and abilities

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Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SR	Issue	
							27	10	56114	Denial of Participation
[illegible]	PITTSBURG USD	KS	01/28/94							
								10	56103	interests and abilities
								10	56104	athletic equipment, supplies and facilities
								10	56105	medical and training facilities and services
								10	56106	support services
								10	56107	scheduling
								10	56108	assignment and training of coaching staff
								10	56109	opportunity to receive coaching
								10	56110	academic tutoring
								10	56111	travel and per diem
								10	56112	athletic housing and dining facilities and services
								10	56113	publicity
[illegible]	[illegible] SCH	[illegible]	10/07/93	12/20/93	02/01/94	01/04/95				
							17	10	56103	interests and abilities
[illegible]	LOVINGTON SCH	NM	12/06/93	02/07/94	06/30/94					
							17	10	56103	interests and abilities
[illegible]	VERMILLION SCH	SD	01/10/94	05/17/94	06/15/94					
							17	10	56104	athletic equipment, supplies and facilities
[illegible]	SILVER CITY SCH	NM	01/04/94	07/07/94	08/02/94					
							17	10	56104	athletic equipment, supplies and facilities
							17	10	56105	medical and training facilities and services
							17	10	56106	support services
							17	10	56107	scheduling
							17	10	56108	assignment and training of coaching staff
							17	10	56109	opportunity to receive coaching
							17	10	56111	travel and per diem
							17	10	56113	publicity

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Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue	
[illegible]	BRIGHTON SCH	CO	07/05/94	11/10/94						
							36	10	56103	interests and abilities
[illegible]	CEDAR CITY SCH	UT	11/15/93	03/15/94	08/30/94					
							38	10	56103	interests and abilities
							38	10	56104	athletic equipment, supplies and facilities
							38	10	56105	medical and training facilities and services
							38	10	56106	support services
							38	10	56107	scheduling
							38	10	56108	assignment and training of coaching staff
							38	10	56109	opportunity to receive coaching
							38	10	56110	academic tutoring
							38	10	56111	travel and per diem
							38	10	56112	athletic housing and dining facilities and services
[illegible]	PROVO SCH DIST	UT	12/06/93	10/19/94	02/15/95					
							38	10	56103	interests and abilities
							38	10	56104	athletic equipment, supplies and facilities
							38	10	56105	medical and training facilities and services
							38	10	56106	support services
							38	10	56107	scheduling
							38	10	56108	assignment and training of coaching staff
							38	10	56109	opportunity to receive coaching
							38	10	56110	academic tutoring
							38	10	56111	travel and per diem
							38	10	56112	athletic housing and dining facilities and services
							38	10	56113	publicity
[illegible]	SALT LAKE CITY	UT	01/31/94	01/26/95	03/01/95					
							37	10	56103	interests and abilities
							37	10	56104	athletic equipment, supplies and facilities

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Office for Civil Rights
94 Athletics Cases Received/Initiated in [illegible]
in FY 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SR	Issue	
							17	10	56105	medical and training facilities and services
							17	10	56106	support services
							17	10	56107	scheduling
							17	10	56108	assignment and training of coaching staff
							17	10	56109	opportunity to receive coaching
							17	10	56110	academic tutoring
							17	10	56111	travel and per diem
							17	10	56112	athletic housing and dining facilities and services
[illegible]	LARAMIE	WY	[illegible]	[illegible]	[illegible]					
							18	10	56101	athletic recruitment
							18	10	56102	athletic financial assistance scholarships
							18	10	56103	interests and abilities
							18	10	56104	athletic equipment, supplies and facilities
							18	10	56105	medical and training facilities and services
							18	10	56106	support services
							18	10	56107	scheduling
							18	10	56108	assignment and training of coaching staff
							18	10	56109	opportunity to receive coaching
							18	10	56110	academic tutoring
							18	10	56111	travel and per diem
							18	10	56112	athletic housing and dining facilities and services
							18	10	56113	publicity
							18	10	56199	other athletic issue
[illegible]	SHERIDAN	WY	[illegible]							
								10	56103	interests and abilities
								10	56104	athletic equipment, supplies and facilities
								10	56105	medical and training facilities and services
								10	56106	support services

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Office for Civil Rights
94 Athletics Cases Received/Initiated in FIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	BC	SB	Issue
								10	S6107 scheduling
								10	S6108 assignment and training of coaching staff
								10	S6109 opportunity to receive coaching
								10	S6110 academic tutoring
								10	S6111 travel and per diem
								10	S6112 athletic housing and dining facilities and services
[illegible]	NATRONA	WY	05/02/94						
								10	S6103 interests and abilities
								10	S6104 athletic equipment, supplies and facilities
								10	S6105 medical and training facilities and services
								10	S6106 support services
								10	S6107 scheduling
								10	S6108 assignment and training of coaching staff
								10	S6109 opportunity to receive coaching
								10	S6110 academic tutoring
								10	S6111 travel and per diem
								10	S6112 athletic housing and dining facilities and services
[illegible]	ARIZONA STATE	AZ	10/04/93	04/29/94	07/29/94				
							38	10	S6101 athletic recruitment
							38	10	S6102 athletic financial assistance scholarships
							38	10	S6103 interests and abilities
							38	10	S6104 athletic equipment, supplies and facilities
							38	10	S6105 medical and training facilities and services
							38	10	S6106 support services
							38	10	S6107 scheduling
							38	10	S6108 assignment and training of coaching staff
							38	10	S6109 opportunity to receive coaching
							38	10	S6110 academic tutoring

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[illegible]

Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	[illegible] Action	RC	SB	Issue	
							18	10	56111	travel and per diem
							18	10	56112	athletic housing and dining facilities and services
							18	10	56113	publicity
							18	10	56114	Denial of Participation
[illegible]	NEW MEXICO	NM	02/28/94							
								10	56101	athletic recruitment
								10	56102	athletic financial assistance scholarships
								10	56103	interests and abilities
								10	56104	athletic equipment, supplies and facilities
								10	56105	medical and training facilities and services
								10	56106	support services
								10	56107	scheduling
								10	56108	assignment and training of coaching staff
								10	56109	opportunity to receive coaching
								10	56110	academic tutoring
[illegible]	EL CAMINO	CA	11/15/93	06/30/94	08/01/94					
							18	10	56101	athletic recruitment
							18	10	56103	interests and abilities
							18	10	56104	athletic equipment, supplies and facilities
							18	10	56105	medical and training facilities and services
							18	10	56106	support services
							18	10	56107	scheduling
							18	10	56108	assignment and training of coaching staff
							18	10	56109	opportunity to receive coaching
							18	10	56110	academic tutoring
							18	10	56111	travel and per diem
							18	10	56113	publicity
[illegible]	PETALUMA	CA	05/18/94	06/23/94		06/23/94				

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U.S. Department of Education
Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
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Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SB	Issue
							31	10	S6114	Denial of Participation
09941217	PLEASANTVLY	CA	05/16/94	07/18/94		07/18/94			
							34	10	S6100	Athletics
09941269	SOUTH PASADENA	CA	06/17/94	10/07/94	02/15/95				
							37	10	S6104	athletic equipment, supplies and facilities
							37	10	S6107	scheduling
							37	10	S6108	assignment and training of coaching staff
							37	10	S6109	opportunity to receive coaching
							37	10	S6113	publicity
							37	10	S6204	services and benefits
[illegible]	CA	CA	06/21/94	07/07/94		07/07/94			
							17	10	S6100	Athletics
[illegible]	EAST YOSEMITE	CA	06/21/94	07/07/94		07/07/94			
							17	10	S6100	Athletics
[illegible]	EAST YOSEMITE	CA	07/14/94	07/28/94		07/28/94			
							22	10	S6103	interests and abilities
[illegible]	RIVERSIDE USD	CA	03/24/94	12/22/94	04/03/95				
							30	05	S2201	criteria for assignment within school
							30	10	S2201	criteria for assignment within school
							30	05	S2202	tracking
							30	10	S2202	tracking
							30	05	S2203	ability grouping
							30	10	S2203	ability grouping
							30	05	S4101	course/degree offerings
							30	10	S4101	course/degree offerings
							30	05	S5202	vocational and academic counseling
							30	10	S5202	vocational and academic counseling
							30	05	S6103	interests and abilities

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Office for Civil Rights
94 Athletics Cases Received/Initiated in CIS
in fy 1994

Docket #	Recipient name	St	Received	Resolved	Monitor	No Action	RC	SR	Issue	
09946001	DIABLO VALLEY C	CA	05/16/94	10/14/94	11/30/94		10	10	S6103	interests and abilities
							10	10	S6104	athletic equipment, supplies and facilities
							10	10	S6105	medical and training facilities and services
							10	10	S6106	support services
							10	10	S6107	scheduling
							10	10	S6108	assignment and training of coaching staff
							10	10	S6109	opportunity to receive coaching
							10	10	S6110	athletic recruitment
							10	10	S6111	travel and per diem
							10	10	S6112	athletic housing and dining facilities and services
							10	10	S6113	publicity
10942070	WALLA WALLA	WA	01/03/94	01/14/94		01/14/94	10	10	S6103	interests and abilities
10942080	U AK FAIRBANKS	AK	08/26/94	09/28/94		09/28/94	20	10	S6100	Athletics
10946002	WALLA WALLA	WA	05/23/94				20	10	S6103	interests and abilities
15941004	ADA EXEMPTED	OH	10/07/93					10	S6100	Athletics
15941014	Coldwater Exempted	OH	12/20/93	10/25/94		10/25/94		10	S6103	interests and abilities
15941022	LAKEVILLE	MI	02/22/94	07/01/94	10/14/94		39			Have not identified issue yet
							37			Have not identified issue yet

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Q. What is the mix of complaint receipts in FY 1993?

A. About two-thirds (66 percent) of complaints were filed against elementary and secondary schools; another 27 percent for postsecondary institution; 2 percent for vocational rehabilitation; and 5 percent for other types of agencies.

Fifty-two percent of all complaints were filed an the basis of disability; 22 percent on race and national origin; 9 percent on multiple basis; 8 percent on sex, 1 percent on age and 8 percent on other basis.

Complaint Receipts: Basis

Q. What were the bases of the complaints OCR received during FY 1994?

A. During the past 5 fiscal years, more complaints were filed on the basis of handicap discrimination than on any other basis, this also was true for FY 1994 alone.

The bases for all FY 1994 complaint receipts were as follows:

Basis	Number	Percent of Receipts
Handicap	2,732	52%
Race/No	1,162	22%
Sex	449	8%
Age	76	1%
Other*	420	8%
Multiple	463	9%

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*Including bases not under OCR's jurisdiction. These figures include multiple basis complaints where more than one basis is cited.

COMPLIANCE REVIEWS

ISSUE	ACTUAL FY 1993 INITIATIONS	ACTUAL FY 1994 INITIATIONS	PROJECTED FY 1995 INITIATIONS
Title VI Lau	36	56	51
Title VI Ability Grouping	4	0	0
Title VI Over-representation of Minorities in Special Education/Low-track Courses	2	25	63
Title VI Discipline	8	0	0
Title IX EEO for Pregnant Students	4	0	0
Title IX Athletics	21	20	7
Harassment (Racial/Sexual)	1	16	17
Section 504 Location & Identification	0	0	0
Under-representation of minorities and women in Math/Science High Track	0	10	19
Admissions/Testing/Assessment	0	20	16
Higher Ed. Desegregation	0	2	1
Section 504 Accessibility	0	4	0
Non Priority Issues	25	1	0
Issue Undetermined	0	0	6
TOTALS	101	154	180

STATEMENT OF VARTAN GREGORIAN, Ph.D., PRESIDENT, BROWN UNIVERSITY, PROVIDENCE, RHODE ISLAND

Chairman McKeon. Dr. Gregorian.

Dr. Gregorian. Mr. Chairman, Congressman Williams, Congressman Reed, Members of Congress, it is a great honor for me to come before this subcommittee.

Let me say at the outset, since you have the text of my brief, that Brown University has been, is, and will remain a firm supporter of Congress' goal in enacting Title IX. Prior to and since its passage, Brown has worked with great urgency, consistency, and steadiness to put in place policies and programs that provide fair treatment and equal opportunity for women in all facets of life at Brown, including athletics.

At Brown, we take great pride in our century-old athletic program. We also take pride in our burgeoning women's athletic program. In breadth, depth, and quality, it is second to none in the Nation.

First, the undisputed facts are, Brown offers 18 varsity sports for women, including ice hockey, softball, and track. Eighteen sports is more than double the national average.

Second, Brown University had in place in 1979, a mere seven years after enactment of Title IX, a women's program with more than double the number of teams that most universities have today or plan to have tomorrow.

Third, Brown women participate in intercollegiate athletics at three times the national average. Nearly 43 percent of Brown's athletes are women. This puts the University in the top 1 percent of all women's intercollegiate programs in the Nation. In addition, we also have intercollegiate club sports and intramural sports, both providing opportunities for women athletes across a broad spectrum of physical activities.

Fourth, fair treatment for women athletes is not an issue at Brown. I would like to repeat: Fair treatment of women athletes is not an issue at Brown. There is no significant issue at Brown as there may be elsewhere, and I am sure there are, regarding facilities, resources, recruiting, scheduling, and budgeting.

In summary, even the plaintiffs in the current lawsuit against Brown have acknowledged that Brown's women's program is, in their words, a model for the Nation.

So why are we here? We are here because Brown has serious, crucial disagreements with the Office of Civil Rights continuously evolving and shifting regulations governing Title IX, at least as they have been interpreted by a District Court Judge in Providence, Rhode Island. Our so-called "Model for the Nation" program was struck down by a Federal judge, with every one of OCR's three tests, in a decision that took advantage of all the ambiguities and inconsistencies and imprecisions of the rules and guidelines of the OCR.

These rules and guidelines are so ambiguous, so inconsistent, and so imprecise that they leave judges with total discretion and rob institutions of any flexibility in meeting OCR's tests of proportionality, history of continuous improvement, and meeting the interest and abilities of men and women athletes. From my point of view, and I am not a cynic, the message is simple:

One, proportionality: Contrary to OCR, this is not just one of the three tests. It is the paramount test. It is not a safe harbor.

Two, historical effort: If you move too fast and too far, the message is, "Too bad. If you had paced yourself, gone slowly, providing only incremental changes, you would have been better off."

Three, interest and abilities: No amount of data can offset the belief that all students are interested in intercollegiate activities in neat, equal ratios, or at least they ought to be.

The last point is the following: Brown and institutions, I believe, with which we compete adhere to a common set of rules. None apply to this morning's discussions. We accept students first and foremost on the basis of their academic promise. We have no athletic scholarships. Our students receive aid only on the basis of need.

Gate receipts and guarantees are insignificant; television revenues, practically nonexistent. Athletic programs draw from the same sources of funds as faculty, financial aid, the library, and the myriad of services we offer our students. No athletic program, even in the schools against which we compete, breaks even financially.

Therefore, we are here in a sense to allow us responsibility to continue what we believe in. We believe in Title IX. We don't believe in its current interpretations by OCR, and we would like to get a clear-cut definition. If it is affirmative action, let it be so. That is fine. But I do not like this kind of Catch-22 before which we are presented by courts and OCR.

If you have questions, I will answer.

Chairman McKEON. Thank you, Doctor.

[The prepared statement of Dr. Gregorian follows:]

Vartan Gregorian

President of Brown University

Mr. Chairman and Members of Congress:

It is a great honor to appear before your Committee this morning.

I am mindful of the powerful role that government has played in the continuing and unfinished agenda of American democracy, especially in the realm of civil rights and ensuring equality of opportunity for all of our citizens. We, in turn, through our universities and colleges are participants in the constant re-creation of the future of America. We continue to attempt to harness the entire spectrum of our nation's potential talent to educate an enlightened citizenry, and to prepare what Thomas Jefferson once referred to as the "aristocracy of talent" that transcends class, geography, and religion.

And I would add race, gender, and ethnicity to Jefferson's formulation. Our universities and colleges, particularly since World War II, have made major strides to democratize and nationalize access to higher education -- to create opportunities for learning, for research, for growth, for leadership.

All of us have come a long way in our efforts to ensure equality of opportunity. All of us have some distance to travel before all our citizens have an opportunity to partake in the agenda and the lofty goals of the American Democracy.

One of the most important pieces of legislation in eradicating discrimination against women in higher education is Title IX of the Education Amendments of 1972. It prohibits gender-based discrimination in all collegiate activities, from admissions to the classroom. Athletics is not, and should not be, exempt from its non-discriminatory provisions.

Let me say at the outset that Brown University has been, is, and will remain, a firm supporter of Congress' goal in enacting Title IX. Prior to, and since its passage, Brown has worked with great urgency, consistency and steadiness to put in place policies and programs that provide fair treatment and equal opportunity for women in all facets of life at Brown, including athletics.

At Brown we take great pride in our century-old athletic program. We also take pride in our burgeoning women's athletic program. In breadth, depth, and quality, it is second to none in the country.

• First, the undisputed facts are: Brown offers 18 varsity sports for women, including among others, ice hockey, tennis, basketball, crew, field hockey, squash, swimming, cross country, lacrosse, soccer, softball, and track. Eighteen sports is more than double the national average.

•Second, Brown University had in place in 1979 -- a mere seven years after the enactment of Title IX -- a women's program with more than double the number of teams that most universities have today.

•Third, Brown women participate in the intercollegiate athletics at three times the national average. Nearly 43 percent of Brown's athletes are women. This puts the University in the top one percent of all women's intercollegiate programs in the nation. In addition, we also have intercollegiate club sports and intramural sports, both providing opportunities for women athletes across a broad spectrum of physical activities.

•Fourth, the treatment of women athletes is not an issue at Brown. There are no significant issues at Brown, as there may be elsewhere, regarding facilities, resources, recruiting, scheduling, or budgeting.

In summary, even the plaintiffs in the current lawsuit against Brown have acknowledged that the Brown women's program is -- in their words -- "a model for the nation."

So why are we here?

We are here because Brown is in disagreement over crucial issues with the Office of Civil Rights' continuously evolving and shifting regulations governing Title IX, at least as they have been interpreted by a District Court Judge in Providence. Our so-called "model for the nation" program was struck down by a Federal Judge on every one of OCR's three tests in a decision that took advantage of all of the ambiguities, inconsistencies, and imprecision of the rules and guidelines. These rules and guidelines are so ambiguous, so inconsistent, and so imprecise that they leave judges with total discretion and rob institutions of any flexibility in meeting OCR's tests: proportionality, history of continuous improvement, and meeting the interests and abilities of men and women athletes.

From my point of view the message to us is very simple:

One - Proportionality: Contrary to OCR, proportionality is not just one of three tests. It is the paramount test. It is not a "safe harbor."

Two - Historical Effort: If you move too fast and too far, it's too bad. If you had paced yourself, gone slowly, providing only incremental changes, you would have been better off.

Three - Interest and Abilities: No amount of data can offset the belief that all students are interested in intercollegiate athletics in neat, equal ratios, or at least they ought to be.

Furthermore, proportionality means that the number of female athletes actually participating must mirror the number of women enrolled in the undergraduate student body. Brown has welcomed the growth of women in its student body without regard to their interest in participating in intercollegiate athletics. Brown, which for the first time is 51% female, must have in place an athletic program which matches exactly that percentage, or apparently it loses its right to determine the size and content of its program.

Brown is mandated by its board to have balanced budgets, which it has had for the past sixteen years. Four years ago, when faced with budgetary constraints, programs across the University were trimmed and resources were directed to three institution-wide priorities: teaching, library acquisitions, and tuition assistance for needy students. As a part of these efforts, Brown's administration changed, among other things, the status of four varsity sports from university to donor-funded. These included two women's teams and two men's teams, although they continue to compete at the varsity level. In addition, Brown led efforts in the Ivy League to eliminate freshmen football, which it did, a change in policy that affected 35 male athletes at the University. The only other teams eliminated at Brown were men's junior varsity teams.

While Brown, it seems, is free to eliminate freshmen football, discontinue men's junior varsity teams, and change the status of two men's teams, it cannot alter in any way two women's teams and remain in compliance with Title IX because the proportion of female athletes to their membership in the student body would be adversely impacted.

We believe that such decisions, if left standing, will establish an arbitrary numerical reference system that will force universities, pressed by constrained budgets, to eliminate men's sports in order to meet court-imposed quotas, rather than offer an athletic program that meets the respective levels of interest and abilities of both men and women to play varsity sports. As you know, this is already happening across the country.

I invite you to imagine the administrative nightmare that the proportionality test will cause. While the proportion of males and females changes from year to year, teams cannot be turned on and off like hot and cold running water. And I invite you to also contemplate the lost opportunities further cutting or capping men's teams will represent for male students, particularly those students who enjoy the camaraderie of being on a team, even if it means not getting into the game.

Further, the second test requires institutions of higher learning to demonstrate "continuous improvement" in creating opportunities for women. As I noted earlier, following the passage of Title IX, Brown put in place a well-developed women's athletic program. By 1980, as I also mentioned, we had a women's athletic program larger than most universities today. But because we chose to undertake early, rapid expansion, our rate of increase slowed after 1980, and it was decided that we could not, therefore, demonstrate "continuous improvement." In retrospect, Brown would have been better off had it moved slowly and cynically, though, suffice it to say, Brown women would have had fewer opportunities to participate in sports.

Finally, as currently interpreted, the third test requires universities to meet any unmet interest if an institution does not meet the prevailing standards of tests one and two. On the margin, economists at Brown tell me, theoretically there will always be unmet interests, whether it be gymnastics, volleyball, skiing, or archery. But the facts are that on existing teams, Brown women have up to an estimated 100 opportunities to play intercollegiate sports which remain unfilled.

Brown and the institutions against which it competes adhere to a common set of rules. We accept students first and foremost on the basis of their academic promise. We have no athletic scholarships. Our students receive aid only on the basis of need. Gate receipts and guarantees are insignificant and television revenues are virtually non-existent in our league. Athletic programs draw from the same source of funds as faculty, financial aid, the library, and the myriad of services we offer our students. No athletic program in the schools against which we compete breaks even financially.

Under these conditions, I suggest that what is happening here is an assault against common sense. If Brown with its robust program of women's sports is not in compliance with Title IX, it is hard to imagine how any institution is today.

In conclusion, I would like to say again, Brown supports Title IX. But the government, it seems to me, must find ways to make it work. I believe that there is a rational solution to this dilemma that will facilitate progress in eliminating discrimination for women in sports. Such a solution should also permit institutions of higher learning to meet the respective interests of men and women to participate in sports fairly and equally without resorting to blunt and arbitrary measurements, such as those called for by a District Court judge and seemingly also by OCR's regulations. There are certainly more sophisticated and reliable instruments that measure overall interests and abilities, and they can and should be introduced into the equation before it is decided that an institution discriminates against women in a collegiate activity.

Robert Hutchins, former president of the University of Chicago, once said that equality and justice are the two great distinguishing characteristics of democracy. We at Brown are eager to work with this committee, with the Office of Civil Rights, and with our friends and supporters in higher education to clarify Title IX in a way that promotes both.

I would be delighted to answer any questions you may have.

The Brown University News Bureau Mark Nickel, Director

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news

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On Appeal: *Cohen v. Brown*

Brown University Files Appeal in Title IX Athletics Discrimination Case

Brown University today appealed the controversial March 29 ruling by U.S. District Court Senior Judge Raymond Pettine in a precedent-setting Title IX athletic discrimination case. Citing errors of fact, misinterpretations of law and omissions of evidence, attorneys for the University asked the First Circuit Court of Appeals in Boston to set aside Pettine's ruling or, alternatively, to order a new trial.

Among other problems, Pettine's ruling created new compliance standards and defined proportionality requirements that are tantamount to quotas and contrary to the original intent of Title IX legislation, University administrators said.

"Title IX was enacted to rid higher education of gender-based discrimination across the board, a goal Brown University enthusiastically supports," said Brown President Vartan Gregorian. "However, Judge Pettine's ruling and two decades of regulatory revision have turned Title IX completely around. Where Congress once sought to ensure equality of opportunity, Judge Pettine is now requiring an unwarranted numerical conformity and is intruding upon the legitimate administrative autonomy of colleges and universities.

"Colleges and universities are facing very hard choices today. They cannot allow their decision-making powers to be needlessly compromised," Gregorian continued. "We are determined to press our arguments at the Court of Appeals in Boston because we believe Judge Pettine's reading of Title IX provisions and his application of regulations are wrong in many respects, and that his ruling unfairly burdens the administrative autonomy of Brown and other institutions of higher learning."

Equality of treatment is not an issue in the case. Plaintiffs and their lawyers have agreed that Brown's program of women's intercollegiate athletics is a national leader in size and quality and that the University treats its men's and women's teams fairly and without dis-

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crimination. In fact, three days into the trial, both sides signed a partial settlement that endorsed the University's current policies for locker rooms, publicity, recruitment, equipment, assignment of coaches, travel arrangements and many other treatment issues. The University agreed to continue those practices for three years, and all treatment issues were removed from consideration in the trial. What remained was the issue of proportionality.

One of the University's primary objections to Pettine's ruling is that it ignored Title IX's requirement that universities accommodate the demonstrated athletic interest and ability of all students, as Brown's current athletic program does. Instead, the ruling reduces Title IX's non-discrimination purpose to a simple matter of numbers, requiring a "mirroring" of gender ratios between athletes and the general student body. The ruling effectively requires schools to provide additional teams for women without regard for the far greater demand among male athletes for additional teams. Brown, which offers 18 varsity sports for women, already supports intercollegiate teams in every sport played by at least 1 percent of NCAA Division I schools.

"One of the ways institutions can demonstrate compliance is to show a history of expanding opportunities for women, and Brown has done that," said Beverly E. Ledbetter, Brown's vice president and general counsel. "By the late 1970s, our women's program was more than twice as large as the average NCAA Division I program is today, but Judge Pettine dismissed that record because we accomplished our expansion too early. The percentage of Brown athletes who are women also has grown to 42 percent, but Judge Pettine discounted that growth because part of it was achieved by reductions in men's teams. With that kind of reasoning, Brown would be left with only one course of action to meet this test: to establish additional teams for women. Even if Brown added the few women's sports we do not already offer, achieving numerical parity would be impossible. Furthermore, the president has clearly stated that any additional University funds will be devoted exclusively to academic priorities. Given those academic priorities, athletics can grow only through increased team revenues such as gate receipts or gifts."

In addition to proportionality, the University's appeal includes the definition of "participation opportunity," the inappropriateness of numbers used in calculating participation, the ruling's definition of "program expansion," and the inappropriate weight the court gave to the constantly evolving rules and regulations of the U.S. Department of Education's Office of Civil Rights (OCR).

MORE

Proportionality

- The court created a new and more restrictive standard for proportionality.

OCR, which enforces Title IX provisions for the U.S. Department of Education, uses a three-prong test to determine an institution's compliance. The first prong asks "whether the intercollegiate level opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments." The court substituted the phrase "substantially mirrors" for "substantially proportionate," a far different standard that suggests an exact correspondence.

OCR's investigator's manual says there is no set measure for substantial proportionality. Expert testimony by plaintiffs' own witnesses said gender ratios that fall within two or three standard deviation units are to be considered substantially proportionate.

- The court ignored OCR's own rulings on substantial proportionality and provided no guidance on when proportionality is achieved.

In investigations of other colleges, OCR agreed that differences of 7 percent between the gender ratios of athletes and the general student body met the substantially proportionate requirement. The University cited these letters of finding in its written and oral arguments.

Interest and Ability

- The court ignored evidence of female interest and ability to participate in intercollegiate athletics.

During the trial, Brown presented dozens of national studies to determine the relative athletic interests of grade school, high school and college students. The data included samples from national groups as well as actual Brown students and were gathered by a number of external organizations, including UCLA, the College Board (sponsors of the SAT test) and various educational organizations. The evidence demonstrated that in virtually any group of young people, from grade school through college, males exhibit a higher level of interest in competitive sports than females.

Recent admission statistics suggest that college-bound young women consider Brown to be a highly desirable school. Women have outnumbered men in Brown's recent classes, accounting for as much as 54 percent of new students. This year, Brown's undergraduate student body is more than 51 percent female. Next year, the percentage of women will certainly rise above 52 percent. According to Judge Pettine's concept of proportionality, Brown will need to provide additional teams for those new female students whether or not they are interested in intercollegiate athletic competition.

- The court ignored OCR's previous guidance on determining interest and ability.

OCR's 1980 Investigator's Manual instructs its field investigators that one method by which a college can determine the interest and abilities of its students is careful surveys of actual students, reviews of applications information with regard to high school sports, and studies of sports participation in high schools from which the school draws its students.

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Brown presented precisely that kind of data in court, showing that women constitute between 35 and 45 percent of interested athletes. Women currently comprise 42 percent of athletes at Brown.

- By ignoring the unmet interest of male athletes, the lower court would force the University to expand the women's program to a level that exceeds women's relative interest and ability.

OCR's third prong asks "whether it can be demonstrated that the interests and abilities of the members of [the underrepresented] sex have been fully and effectively accommodated by the present program. By ignoring the interests and abilities of the student body as a whole, the ruling creates something tantamount to an affirmative action quota which discriminates against male athletes and grants preferential treatment to women.

- Title IX itself says that it is not an affirmative action or quota statute:

"Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating [in any program or activity]..."

"By assuming that all students are equally interested in participating in intercollegiate athletics, the ruling effectively *prevents* schools from equally accommodating the interests and abilities of the entire student body, as Title IX requires," Ledbetter said. "We do not believe this is in the best interests of higher education, and it certainly is not in the best interests of collegiate athletes."

Participation Opportunities

- The lower court failed to distinguish between "participation opportunities" and "actual participants."

Prior to this ruling, no court had defined "participation opportunity" in the context of Title IX. During the trial, Pettine frequently asked witnesses to define participation opportunity and to say whether they thought participation opportunities could exist if there were no athletes to fill them. The University used several methods to prove that women athletes do not make use of all the opportunities currently available to them at Brown. The most conservative method – using Ivy League travel squad limits to determine team size – identified at least 30 unused opportunities; the actual number could be as high as 90.

In his opinion, Pettine found the various methods too complex and ruled that participation opportunities should be measured by counting the actual participants on intercollegiate teams. "The concept of any measure of unfilled but available athletic slots does not comport with reality," Pettine said.

"Judge Pettine is wrong to dismiss the University's statistical evidence so lightly, and he is being illogical when he suggests that participation opportunities and actual participants are one and the same," said Jeffrey Michaelson, one of the University's trial attorneys.

MORE

"There are certainly at least nine participation opportunities available on a baseball team even if only six athletes try out."

- The lower court's finding that Brown predetermines participation through recruiting and limiting team size was not supported by the evidence.

Brown University offers women 21 intercollegiate teams (18 varsity teams and three club teams that play at the intercollegiate varsity level), one of the broadest, most opportunity-rich programs in the nation. It is illogical to suggest that such a program predetermines participation opportunities by limiting teams.

Issues of recruiting were settled in an agreement early in the trial. Plaintiffs and their attorneys accepted the University's current recruiting program as fair and equal with respect to treatment of men's and women's teams. Most coaches also testified that they have adequate recruiting resources to support their teams. Furthermore, recruitment has more to do with the quality of a teams performance than with the number of participation opportunities afforded student athletes.

The Numbers

- The lower court used figures that overstate men's participation even though more reliable figures about team size were available from direct testimony of coaches.

In adding up the number of participants, the March 29 ruling used NCAA squad list figures for 1993-94. For purposes of checking eligibility, these lists include names of athletes who may not have joined the team and are typically much larger than actual team sizes. According to the opinion, 38 percent of Brown athletes are women.

Better figures were available from the sworn testimony of men's and women's coaches given in court. For example, Mark Whipple, Brown's football coach, testified that his squad included approximately 80 players; Pettine included 126. Bob Gaudet, the men's hockey coach, listed 31; Pettine listed 41. Using numbers from the testimony of coaches, the figure for all varsity athletes is approximately 42 percent women.

- The lower court's opinion acknowledged that certain club teams compete at the intercollegiate varsity level (e.g., women's water polo), but failed to consider these teams when it computed the proportion of athletes who are women.

OCR's first prong directs investigators to consider "intercollegiate level opportunities," and specifically includes club teams that regularly compete at the varsity level. In his ruling, Pettine excluded intercollegiate club teams from consideration when he computed participation rates for the first prong. The difference, according to University figures, is nearly three percentage points and would raise the participation rate of women from 41.6 percent to 44.5 percent – within OCR's own definition of "substantial proportionality."

Although Pettine excluded those teams from consideration under the first prong, he used them to demonstrate an unmet need under the third prong, saying that they have a long history of competitive schedules.

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- The lower court made false or unnecessary distinctions among types of intercollegiate teams, then employed those distinctions inconsistently.

The ruling made an unwarranted distinction between University-funded and donor-funded varsity teams, suggesting that donor-funded teams do not allow athletes to reach their full potential. In doing so, the ruling ignored the fact that more than twice as many men play on donor-funded teams. He also created a funding distinction that is irrelevant to OCR.

"The three-prong test looks only at whether athletes are competing at the intercollegiate level – not whether their teams are denominated as varsity or club and not at their level or source of funding," said Walter B. Connolly Jr., Brown's lead trial attorney. "Judge Pettine's opinion creates new distinctions and tests which are inconsistent with the previous guidance of the very agency which his analysis purports to follow. You can't have it both ways. If you are going to follow OCR guidance, you have to follow it all the way."

Program Expansion

OCR's second prong asks "whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of [the underrepresented] sex."

- The lower court discounted Brown's early, explosive growth in women's sports, but it did not provide any guidance as to what might constitute "a history and continuing practice of program expansion."

"When women began attending Brown in increasing numbers in the 1970s, the University created a women's varsity program that far exceeded demand. By 1980, Brown had a women's program of a size and quality that most schools still haven't matched," said Robert A. Reichley, executive vice president. "That good-faith effort to build women's varsity sports appears to have been a grave mistake. According to Judge Pettine's ruling, Brown apparently would have been found in compliance if it had spread its development across two decades rather than accomplishing most of it in six years. If it was the intent of Congress to discourage early and rapid expansion of women's athletic opportunities, we have arrived at a truly absurd state of affairs."

- During the trial, Brown showed that the proportion of women in the athletic student body has been rising steadily and has increased by 25 percent since 1986. The lower court ruled that a decrease in the proportion of men (and the consequent increase in the proportion of women) is not evidence of program expansion. Under Pettine's ruling, an institution's progress toward "substantial proportionality" is disregarded under prong two, leaving institutions no alternative but to establish additional women's teams. Such an affirmative action requirement was never intended by Title IX and compromises the administrative autonomy of educational institutions.

"Brown University demonstrated its good-faith commitment to equality of opportunity by building a women's program early and building it big," Reichley said. "The kind of affirmative action quotas which Judge Pettine's ruling appears to require are contrary to the spirit and intent of Title IX."

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Deference

Much of this case has turned on rules, regulations and policies developed around Title IX by the former Department of Health, Education and Welfare, its successor, the Department of Education, and OCR, rather than on the statute itself. The University has argued that OCR's statements are not entitled to the degree of deference given them by the lower court.

- Congress limited the rule-making authority it delegated to HEW and OCR.

In its pre-trial brief, the University included extensive arguments about the nature of rules and the degree of deference to which they are entitled in court. OCR's statements fail the tests for "legislative" statements, must be considered only as "interpretative" rules, and are not entitled to judicial deference.

- OCR's statements and guidelines are not internally consistent, and different versions published over the years are often not in agreement with each other.

An HEW fact sheet published in 1975 said, "Neither quotas nor fixed percentages of any type are required under the regulation." In 1980, OCR's Investigator's Manual said, "Title IX does not require institutions to offer ... a proportional number of intercollegiate participation opportunities (with respect to the division by sex of the total student enrollment. ... Rather, *it requires institutions to meet the interests and abilities of women to the same degree as they meet the interests and abilities of men*" [emphasis added].

Ten years later, OCR dropped the specific language about meeting interests and abilities to the same degree and adopted the current "equally and effectively accommodates student interest and abilities."

- OCR's Policy Interpretation and Investigator's Manual ignore or are inconsistent with the Javits Amendment to Title IX.

The Javits Amendment was a clear expression of the intent of Congress that the nature of certain sports may be a legitimate reason why one team may be larger than another. It instructed the secretary of HEW to prepare and develop regulations that would make "reasonable provisions considering the nature of particular sports" – usually taken as a reference to football, which requires a very large squad size and has no corresponding sport available for women. In establishing its "substantial proportionality" rule, OCR ignored the fact that any school with a football team would have an automatic imbalance of nearly 100 males.

"Many observers have said it is out of character for Brown to argue publicly with its students, and they wonder why the University continues to pursue the case," said Robert A. Reichley, executive vice president. "In fact, the University is defending its principles. It stands for genuine equality of opportunity, not preferential treatment. It resists challenges to its autonomy with regard to setting institutional priorities. And where it sees important higher education legislation subverted by contradictory and historically divergent regula-

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tions and interpretations, it works to set the matter right. Many Title IX issues in this case are being ruled on for the first time. We believe the current ruling is seriously flawed and must not be allowed to stand unchallenged."

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Related documents available from the Brown News Bureau

94/143 – Fact sheet on men's and women's varsity sports at Brown University
94/074 – Summary of national data about athletic interest
94/039 – Brown, Plaintiffs announce partial settlement
94/052 – Statement of the University's case at the start of the trial

Text of Partial Settlement Agreement
University's post-trial memorandum
University's brief on appeal

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fact sheet

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The Title IX Case

Background for Men's and Women's Varsity Sports at Brown University

Brown Offers One of the Nation's Largest Varsity Programs

NCAA Division I schools must offer at least six men's and six women's championship sports. Each year, the NCAA provides revenue-sharing funds based upon the number of teams in excess of 12. According to NCAA records for 1991-92, Brown was tied for second place in the number of sports offered. Of the 292 schools which participated in Division I sports, only Harvard offered more NCAA championship sports than Brown.[1]

Top 10		Selected National Comparisons			
Harvard	30	Alabama	18	Syracuse	16
Brown	28	UCLA	23	Texas A&M	20
Boston College	28	Georgetown	19	Tulane	15
Cornell	28	Kentucky	14	UNLV	12
Penn State	28	Miami (FL)	16	Vanderbilt	15
Princeton	28	Nebraska	21	Villanova	24
Yale	28	Notre Dame	25	Washington	19
Dartmouth	27	Providence College	20		
Michigan State	27	Purdue	18		
Ohio State	27	Southern Cal.	17		
Rutgers	27	Stanford	25		

- Brown offers 18 varsity women's sports (15 funded, 2 unfunded, 1 unfunded coed team), more than double the national average for NCAA Division I schools (8.3).
- The average number of women who participate in varsity sports at NCAA Division I schools was approximately 112 in 1993-94. This year, Brown will field 338 women,[2] about three times the NCAA Division I average.
- This year, nearly 12 percent of Brown undergraduate women will participate in varsity sports, nearly triple the national average.

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[1] The NCAA does not offer national championships for all varsity sports. Although Brown fielded 31 intercollegiate varsity teams at the time, the NCAA offered national championships for only 28. Data were reported in a memorandum from NCAA Executive Director Richard D. Schultz to CEOs of Selected Division I Institutions, August 14, 1992.

[2] According to the testimony of coaches as represented in Brown's post-trial memorandum, Tab A.

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Participation Opportunities[3]

University-Funded Women's Teams	**1994-95 Players**	**University-Funded Men's Teams**	**1994-95 Players**
Basketball	12	Baseball	28
Crew	47	Basketball	16
Cross Country	17	Crew	54
Field Hockey	31	Cross Country	27
Gymnastics	12	Football	80
Ice Hockey	18	Ice Hockey	31
Lacrosse	34	Lacrosse	43
Soccer	25	Soccer	26
Softball	12	Swimming and Diving	13
Squash	13	Tennis	11
Swimming and Diving	23	Track (two teams)[4]	58
Tennis	10	Wrestling	27
Track (two teams)[4]	46	**Subtotal University-Funded**	**414**
Volleyball	11		
Subtotal University-Funded	**311**		
Donor-Funded Women's Teams	**1994-95 Players**	**Donor-Funded Men's Teams**	**1994-95 Players**
Fencing	11	Fencing	19
Golf	1	Golf	9
Skiing	15	Squash	11
Subtotal Donor-Funded	**27**	Water Polo	21
		Subtotal Donor-Funded	**60**
TOTAL Women's Varsity	**338 (41.6%)**	**TOTAL Men's Varsity**	**474 (58.4%)**
Other Intercollegiate Women's Teams	**1994-95 Players**	**Other Intercollegiate Men's Teams**	**1994-95 Players**
Sailing	35	Sailing	35
Soccer Club	20		
Water Polo	15		

- Brown offers varsity teams for 15 of the 18 sports offered by at least 1 percent of the NCAA Division I schools in the East and offers intercollegiate opportunities in the remaining three sports.

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[3] Numbers of squad members for 1994-95 are taken from trial testimony. Where a coach did not testify, the number is drawn from initial squad lists after first deletions. (Figures submitted as part of Brown's post-trial memorandum.)

[4] Indoor and outdoor track are often counted as separate teams but generally have the same squads.

MORE

Chronology of Intercollegiate Varsity Teams at Brown

Brown was an early leader in women's sports, establishing the nation's first women's ice hockey team and undertaking a period of intense expansion when Brown and Pembroke, the undergraduate college for women, merged in 1971. By 1978, Brown's program of varsity athletics for women offered twice as many teams as most NCAA Division I schools do now.

Women's	Year	Men's	
	1869	Baseball	
	1878	Football	
	1879	Outdoor Track	
	1897	Ice Hockey	
	1900	Basketball	
	1905	Swimming	
	1912	Indoor Track	
	1921	Cross-Country	
	1922	Wrestling	
	1925	Golf[5]	
	1926	Lacrosse	
	1926	Soccer	
	1927	Tennis	
	1961	Crew	
Ice Hockey[6]	1967		
	1971		**Brown and Pembroke College Merge**
Tennis	1972		
Basketball	1973		
Crew	1973		
Field Hockey	1973		
Gymnastics	1974		
Squash	1974		
Swimming	1974		
Volleyball	1974	Water Polo	
Cross Country	1975		
Lacrosse	1975		
Soccer	1975		
Softball	1975		
Outdoor Track	1978		
Fencing	1980	Fencing	
Indoor Track	1982		
	1989	Squash	
Golf[5]	1993		
Skiing	1994		

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[5] Brown's golf team is now a single coed squad.

[6] Brown established the nation's first women's ice hockey team. The Bears were organized in 1964 and became a varsity sport in 1967, before the merger of Brown and Pembroke.

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A Chronology of the Title IX Case

In the spring of 1991, Brown was facing a double-edged budget dilemma. Unless it took some dramatic steps, the University would finish the year with a $1.6-million deficit. Worse, a structural problem in the University's budget virtually guaranteed that deficits would be a recurring problem. Brown needed to downsize.

President Gregorian announced an immediate moratorium on new hiring and directed that all departments throughout the University would cut their budgets to stave off the deficit. (There would be only two exceptions. The scholarship aid budget and the library acquisitions budget were exempt from cuts.)

April 29, 1991

To help produce its share of savings, the athletic department withdrew funding from four varsity teams: men's water polo and golf, women's gymnastics and volleyball. The teams continued to compete at the intercollegiate varsity level and remained eligible for post-season tournament play, but had to raise their own funds.

The cuts affected approximately 60 athletes in roughly the same male-to-female ratio as for all Brown varsity athletes at the time: 60-40. The University continued to honor existing contracts for coaches of the teams.

April 9, 1992

Approximately a year later, members of the two women's teams filed suit alleging sexual discrimination and violation of Title IX, a federal law that prohibits discrimination based on gender at any educational institutions that receive federal funds. The women were represented by Trial Lawyers for Public Justice, an advocacy group in Washington, D.C.

July 15, 1992

Attorneys for the plaintiffs asked for a preliminary injunction that would require Brown to reinstate funding for the two women's teams and refrain from any further cuts in women's sports until the case could be heard on its merits. Arguments were presented before Judge Pettine between Oct. 26 and Nov. 16.

Dec. 22, 1992

Pettine granted the preliminary injuction, requiring Brown to reinstate full varsity funding and support. The University immediately sought a stay of that injunction and requested an expedited appeal.

Dec. 30, 1992

The U.S. Court of Appeals for the First Circuit granted a temporary stay; Brown did not have to reinstate funding until the appeal could be heard.

Feb. 4, 1993

Attorneys for both sides argued the appeal in Boston.

MORE

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April 15, 1993

The Appeals Court upheld the lower court, the stay was lifted, and Brown restored funding for the teams in the 1993-94 season.

Sept. 26, 1994

After numerous delays at the request of plaintiffs' attorneys, the trial began in U.S. District Court in Providence before Senior Judge Raymond Pettine.

Sept. 28, 1994

Attorneys for both sides agreed to a partial settlement that recognizes Brown's treatment of men's and women's teams as nondiscriminatory with regard to locker rooms, facilities for practice and competition, schedules for games and practices, access to the weight room and trainers, equipment and supplies, travel arrangements, assignment of coaches, budgeting procedures and many other factors. Brown agreed to continue those current policies and practices for three years. Treatment issues were thereby removed from consideration in the trial, which then focused on the issue of proportionality.

Oct. 11, 1994

Plaintiffs requested and received a three-week recess to depose witnesses for the defense.

Dec. 9, 1994

Testimony concluded after 29 days in court.

Dec. 16, 1994

Final oral arguments were made by attorneys for each side.

Feb. 10, 1995

Post-trial memoranda were presented to Pettine, followed two weeks later by reply briefs from both sides.

March 29, 1995

Pettine entered his final opinion and order, finding for the plaintiffs. Brown was given 120 days to file a plan for compliance, but Pettine stayed his own order pending appeal. Brown announces its intention to appeal the case to the First Circuit Court of Appeals.

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Unequal Treatment Claims Dropped

Brown, Plaintiffs Announce Partial Settlement Agreement in Title IX Case

Brown University and a group of women athletes who charged the University with violation of Title IX have announced a partial settlement in a current Title IX trial. The settlement, announced Wednesday, Sept. 28, removes all issues of equal treatment for men's and women's funded varsity teams from consideration in the trial.

Under terms of the 26-page document, which must be formally approved by Senior U.S. District Judge Raymond Pettine, the women athletes agree to drop any claims of unequal treatment of funded varsity teams, and the University agrees to continue its current programs and policies of fair and equal treatment with respect to those teams. The agreement will terminate automatically after three years, no later than Oct. 30, 1997.

"When Brown University's current treatment of men's and women's teams is evaluated on a programwide basis as Title IX requires, there is absolutely no suggestion of discrimination against women's teams," said Robert A. Reichley, executive vice president (alumni, public affairs and external relations). "In this settlement, the University is only agreeing to continue its current policies and practices, maintaining its historical role as a national model for women's intercollegiate varsity athletics."

To date, the case has raised isolated, unconnected anecdotes of perceived inequalities between teams, Reichley said. None of the anecdotes demonstrated discrimination; rather, they pointed to legitimate differences between teams or to the preferences of individual coaches in managing their athletes. The anecdotes included the sort of complaints that could be heard from men's and women's teams alike.

By eliminating these issues of equality of treatment from the court's consideration, the settlement is expected to shorten the length of the trial dramatically. Prior to the agreement, estimates of the trial's duration ran as high as three months. On the day after the

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agreement was announced, Judge Pettine asked attorneys in open court how long they would require to present their cases. Based on their responses, Pettine determined that the trial would last approximately three more weeks.

The agreement, titled *Settlement Agreement and Stipulation of Dismissal in Regard to Equality of Treatment*, covers all "funded varsity teams at Brown as to which there is currently no dispute concerning their funded varsity status." It assures that Brown will continue its fair and equal treatment of men and women's teams in such categories as locker rooms, facilities for practice and competition, schedules for games and practices, access to the weight room and trainers, equipment and supplies, coaching, travel arrangements, publicity, and recruiting, among others. At the end of each academic year covered by the agreement, the University will prepare an annual report regarding subject areas covered in the document.

The agreement did not address attorney's fees.

"This agreement ends an unnecessary conflict," said Brown President Vartan Gregorian, who has been in daily telephone contact with attorneys and administrators at the University while he is traveling abroad. "It will allow the court to focus on the major issues which lie at the heart of the case."

The trial will now focus on the major legal issues, including whether Title IX requires a certain proportionality between men and women athletes and whether any difference of proportionality requires further accommodation of the athletic interests and abilities of students by adding more women's teams.

"Although Brown has resolved these treatment matters with the plaintiffs, the University was fully prepared to answer and disprove any and all allegations in court," said Walter B. Connolly Jr., who has argued the University's case before Judge Pettine. "The current policies and practices which the University has committed itself to support are substantially the same as they were two years ago."

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94/039

STATEMENT OF DAVID L. JORNS, Ph.D., PRESIDENT, EASTERN ILLINOIS UNIVERSITY, CHARLESTON, ILLINOIS

Chairman MCKEON. Dr. Jorns.

Dr. JORNS. Thank you, Mr. Chairman. I believe I can do this in five minutes.

I appreciate the opportunity to address you today. I am David Jorns, the President of the Eastern Illinois University, located in Charleston, Illinois. I have held the position since November 1992.

I can speak to OCR's enforcement of Title IX only from my perspective as the president of a medium-sized, public, regional university which has undergone a recent compliance review. I hasten to add that I support OCR's efforts in this regard and gender equity in all respects. Moreover, I appreciate the efforts of Congressman Hastert and Ms. Cantú in helping us resolve the concerns we had with the Chicago office of OCR.

Our difficulties with OCR and its enforcement of Title IX on our campus are primarily centered on process. When the OCR team visited Eastern initially, we were led to understand that any proposed settlement would be shared with us verbally so that we might correct errors in fact and negotiate the details which would lead to our eventual compliance. In fact, no such thing happened. OCR's proposed settlement agreement was based on factual findings by OCR, but the agency would not share its letter of findings with Eastern, even in draft form. To maintain security for the document, EIU offered to review it in Chicago, instead of requesting a hard copy; this was rejected without adequate explanation.

Due to lack of information, EIU was effectively prevented from identifying facts, if any, supporting OCR's conclusions and determining whether OCR's proposed agreement was tailored to any specific alleged violation. Instead, we were sent a settlement agreement we had never discussed, which indicated, among other things, that we were to add four women's sports in the very near future: women's soccer, which we were already adding of our own accord, women's golf, women's field hockey, and women's gymnastics. We were given a very short period in which to comply.

Two of the proposed sports would have been prohibitively expensive for us, considering that athletics on our campus does not make money. Moreover, the same two sports had no relevance whatsoever to our school. We explained that no unmet interest had been displayed for these two sports. Women's gymnastics, I have been told, is a sport which is very expensive and is beginning to fade because the most competitive female gymnasts tend to be below college age. Women's field hockey is not even played in Illinois to any extent, and we would have been required to import players in the northeastern part of the country. We would also have had great difficulty finding competition since neither sport is prevalent in our athletic conference. In any case, we didn't have the necessary funding.

OCR will tell you that they never recommended that men's sports be cut in pursuit of gender equity. However, that seems to be the case in many instances, if the university or college can't afford to add more sports. Our attorney managed to mitigate some of the conditions in the settlement agreement sent us by OCR, but we had no choice but to cut two men's sports, swimming and wrestling, in order to reach the immediate goal set by OCR. I might add that, when the inevitable student protests began, women athletes—particularly women swimmers—were among those who opposed cutting the men's sports most aggressively.

Again, I believe we should comply with Title IX; it is the right thing to do. But, it took many years to get into this position, and if your institution plays football, as has been noted, coming into compliance is expensive and time consuming. Schools without football do not seem to have nearly the problem we have.

By testing for interests and abilities and looking at emerging women's sports as well as through a gradual migration of resources over a reasonable number of years, even football schools can come into compliance. However, aggressive settlements which do not take the institution's circumstances into consideration, settlements such as we were given, inevitably lead to cuts in men's sports.

OCR really doesn't need to dictate terms or micromanage compliance. Universities and colleges are under constant accreditation review from various agencies, including the NCAA.

The agencies point out areas of concerns and expect the institutions to correct the concern within a specified period. In our gender-equity compliance review, however, OCR informed us, among other things, that we were not pulling out bleachers far enough for women's events, since they are pulled out two rows less than men's in the same gymnasium. I am not sure why that was important, but we probably could have figured it out on our own.

Thank you.

Chairman **McKEON**. Thank you.

[The prepared statement of Dr. Jorns follows:]

STATEMENT OF DR. DAVID L. JORNS, PH.D., PRESIDENT, EASTERN ILLINOIS UNIVERSITY, CHARLESTON, ILLINOIS

Thank you for the opportunity to address you today on this important matter. My name is David Jorns and I am the president of Eastern Illinois University located in Charleston, Illinois. I have held this position since November, 1992.

I can speak to OCR's enforcement of Title IX only from my perspective as the president of a medium sized, public, regional university which has undergone a recent compliance review. I hasten to add, that I support OCR's efforts in this regard, and gender equity in all respects. Moreover, I appreciate the efforts of Congressman Hastert and Ms. Cantú in helping us resolve the concerns we had with the Chicago office of OCR.

Our difficulties with OCR and its enforcement of Title IX on our campus primarily centered on process.

When the OCR team visited Eastern initially, we were led to understand that any proposed settlement would be shared with us verbally so that we might correct errors in fact and negotiate the details which would lead to our eventual compliance. In fact, no such thing happened.

OCR's proposed settlement agreement was based on factual findings by OCR, but the agency would not share its letter of findings with EIU, even in draft form.

To maintain security for the document, EIU offered to review it in Chicago, instead of requesting a hard copy; this was rejected without adequate explanation.

Due to lack of information, EIU was effectively prevented from identifying facts, if any, supporting OCR's conclusions and determining whether OCR's proposed agreement was tailored to any specific alleged violation. Instead we were sent a settlement agreement we had never discussed which indicated, among other things, that we were to add four women's sports in the very near future: Soccer [which we were already adding of our own accord], women's golf, women's field hockey, and women's gymnastics. We were given a very short period in which to comply.

Two of the proposed sports would have been prohibitively expensive for us considering that athletics on our campus does not make money. Moreover, these same two sports had no relevance whatsoever to our school. We explained that no unmet interest had been displayed for these two sports. Women's gymnastics, I have been told, is a sport which is very expensive and is beginning to fade because the most competitive women gymnasts are below college age. Women's field hockey is not even played in Illinois to any extent and we would have been required to import players from the northeastern part of the country. We would also have had great difficulty finding competition since neither sport is prevalent in our athletic conference. In any case, we didn't have the necessary funding.

OCR will tell you that they never recommend that men's sports be cut in pursuit of gender equity. However, that seems to be the case in many instances if the university or college can't afford to add more sports. Our attorney managed to mitigate some of the conditions in the settlement agreement sent to us by OCR, but we had no choice but to cut two men's sports, swimming and wrestling, in order to reach the immediate goals set by OCR. I might add that, when the inevitable student protests began, women athletes—particularly women swimmers—were among those who opposed cutting the men's sports most aggressively.

Again, I believe we should comply with Title IX; it's the right thing to do. But, it took many years to get into this position and, if your institution plays football, coming into compliance is expensive and time consuming. Schools without football do not seem to have nearly the problem we have.

By testing for interests and abilities and looking at emerging women's sports, as well through a gradual migration of resources over a reasonable number of years, even football schools can come into compliance. However, aggressive settlements which do not take the institution's circumstances into consideration, settlements such as we were given, inevitably lead to cuts in men's sports.

OCR really doesn't need to dictate terms or micromanage compliance. Universities and colleges are under constant accreditation review from various agencies, including the NCAA. The agencies point out areas of concern and expect the institutions to correct the concern within a specified period. In our gender equity compliance review, however, OCR informed us that we were not pulling out bleachers far enough for women's events, since they are pulled out two rows less than men's in the same gymnasium.

We probably could have figured that out.

Thank you.

Chairman McKEON. You know, it is interesting to me, we have now heard testimony from five people, and some sounding like different sides on the issue, but we haven't heard anyone say that they don't think women should have opportunity or should have equal opportunity.

But listening to some of this last testimony reminds me of some of the other things we have heard about government in the past, at least while I have been here in Congress, especially these last few weeks—that sometimes there are "unintended consequences" that people who write the laws, and people who write the regulations, have great intentions, but by the time it gets to some person who administers that regulation, sometimes people get caught up in their own authority. We have seen that happen with OSHA; we have seen it happen in the Post Office, anywhere. And it isn't just government, it is in private industry, too. People—sometimes a little authority goes to their head and they want to use that authority.

In your testimony, Doctor, you said that you had asked for some indication first. It seems to me that if people really are all trying to work together for the same thing, they sit down together, define the problems, then work towards a solution. You don't hit someone over the head with a mallet.

I see everybody nodding, but how do we make that happen? What would you do to resolve this without going to court or using a mallet on somebody? How can we sit down like reasonable people to all achieve what we are trying to achieve?

Ms. CANTÚ. Mr. Chairman, in the two years I have learned that there are ways that we can become better law enforcement officers. We have tried to reinvent ourselves through our complaint processing to help the process improve.

One change that was needed, because I heard it from more people than President Jorns, was that universities wanted to see in draft what OCR was likely to make a finding on. We now do that. We now have our regional offices share, and that is a new practice. We listened to the folks that we worked with who wanted us to share information on what we were likely to make a determination on.

Secondly, I have appointed a national issue coordinator, a single person whose sole responsibility is to see to it that we are using the best-trained, the best-skilled investigators in the area of Title IX college athletics.

So I have made training a priority, and coordination and sharing of information a priority. We do agree that government should be improved and are working on that. We know we are not perfect, and we are trying to improve ourselves.

Chairman MCKEON. A lot of it is attitude, if you go in with the idea that we are trying to work together, not that we are trying to catch you doing something wrong——

Dr. JORNS. I would like to compliment Ms. Cantú. Working with her has been excellent. Unfortunately, it took the intervention of a Federal Congressman—Ms. Cantú is a very highly placed official in United States Government—and it took an enormous amount of grief and effort. To this date, our attorney expenses just in this simple matter have exceeded $30,000, which we really didn't have to spend. So, it is unfortunate that we have had to go through this. Of course, most institutions don't have the access we have, because Congressman Hastert took our part.

Ms. CANTÚ. It doesn't take a Congressman to get my attention. I pick up my own phone. I have, in fact, had both universities and complainants call my office to ask for assistance. That is one of the purposes of the issue coordinator, to help facilitate.

I agree; it is all in an attitude. We believe that universities are trying to do the right thing, and I compliment Brown University for what it has done. We do give universities credit for what they have done. But it doesn't take a Congressman to get my attention. Anyone can write or call or see me in person. We do try to be open to the public.

Dr. GREGORIAN. May I comment about how we can improve?

First, the judge in question ruled against us because he said we have to mirror proportionality between the athletes we have and the student body we have on the basis of gender, not substantial proportionality, which is what OCR says; it said to mirror proportionality. That is one thing OCR could have cleared by filing an amicus brief with us, that we disagree with the judge's ruling; that is not what OCR intended.

Second, OCR says we can go and study mixed surveys, but it doesn't say which surveys are acceptable to the courts and which surveys are acceptable to OCR. We have gone to SAT, college boards and the others, NCAA. The judge would not admit the NCAA guidebook, yearbook, as evidence. We have spent a lot of money. There are no accepted text methods that satisfy either OCR or the judges. Why doesn't OCR say what is acceptable and then we can correct accordingly.

Third, OCR, to their great credit, and Title IX, to its great credit, encourages that people should include intercollegiate club sports for more women. The judge in question discounted club sports altogether. Only varsity clubs. OCR should file a brief with us saying intercollegiate athletics, club sports do count for women. Those are the kinds of things that need clarification.

My quarrel is not with Ms. Cantú, whom I respect very much, because these rules are not her recollections; she is administering them. My quarrel is that the intent has been left so unclear that everybody can interpret it any way they want.

Chairman McKEON. Thank you very much.

Mr. Williams.

Mr. WILLIAMS. Thank you.

Secretary Cantú, when enforcing Title IX, does—and if so how does—the Office of Civil Rights take into consideration the inherent differences sport to sport?

Ms. CANTÚ. As I recounted, there were a number of congressional discussions about what Title IX meant to cover, and Congress decided, and I believe correctly, that Title IX was intended to cover all sports, so we don't exempt any sports from the Title IX review.

We are required by Congress, and I believe it was the right decision by Congress, to consider the unique aspects of each sport. That means that we give credit for sports that require additional medical attention or additional medical services because of safety reasons.

We are respectful of sports that require more staff because there are more crowds and there is a need for crowd management. We respect that. We don't ding a campus that has additional services or resources for that. We look at this time at the unique aspects of each sport as required, and that has been our practice and continues to be our practice.

Mr. WILLIAMS. President Gregorian, it is good to see you here again. When I chaired this subcommittee, you and I visited a lot when you were across the street at the Library, and it is nice to have you with us again.

The Federal court did not order Brown to cut men's sports efforts, did it?

Dr. GREGORIAN. I am sorry?

Mr. WILLIAMS. Did the court order Brown to reduce men's sports spending or generally reduce your efforts with regard to members' sports?

Dr. GREGORIAN. No. Let me answer. I am glad you brought this up.

We have not eliminated any women's teams, contrary to the widespread propaganda today nationally. We have not. We have changed the status of four teams, two men's and two women's, from university- to donor-funded, and we also helped them to raise funds. One of those two women's teams has been reinstated, thanks to a gift from men's volleyball. The only thing we have eliminated is freshman football, because we wanted to, not because we were ordered to, for financial reasons, rather than doing it for Title IX reasons. I should also say that.

We have eliminated four men's junior varsity teams. We have not eliminated a single women's team. The court, however, in its judgment, has given us four choices: number one, eliminate all your athletic programs the way Brooklyn College has done; number two, cap your men's team, cap the teams; third, eliminate teams; and fourth, increase women's teams.

We have 34 sports. If one of them is football, we will still be facing the issue of proportionality, so the judge has not ordered us to do it, but does it in such a way that we cannot do anything but either increase the budget for athletics, which I don't intend to do because it is the same source that covers library, instruction, and so forth.

Any increase in the athletic budget has to come from donors, not by university funds. I have lost faculty salaries, and my library struggles. I decided six years ago, we will not put any money into athletics. The only thing I will do is cut, and how we cut is up to us.

Mr. WILLIAMS. Thank you.

Dr. Jorns, should Title IX count football player walk-ons differently than it treats participants in the other sports?

Dr. JORNS. It would help. We have 63 scholarships, and we play 1AA football, and we have had squad sizes of about 100. We have voluntarily capped at 80. So if that difference could be taken into consideration, it could help.

Mr. WILLIAMS. Given that football is primarily almost exclusively a man's sport, would you be willing then to not count at least walk-ons in sports that are primarily women's sports, field hockey or volleyball or synchronized swimming? Would you treat them the same way you treat football?

We are all after equity, including you. If we are going to exclude part of football, can we exclude part of sports that are primarily women's sports?

Dr. JORNS. I suppose we can. I don't know what that would accomplish, but we could.

Dr. GREGORIAN. We could, too.

Chairman MCKEON. Thank you.

Mr. Gunderson.

Mr. GUNDERSON. Thank you. I am tempted to follow up the line of questioning Mr. Williams has asked, but I think I want to go back to a different set.

Secretary Cantú, what is your position on *Cohen v. Brown University*?

Ms. CANTÚ. I have no position. It was not a complaint brought to my office. My staff have not investigated that campus. We have not participated in any of the court proceedings, and I have not had an opportunity to review the record in that case, so I have no position to report today.

Mr. GUNDERSON. Well, but it seems to me that if I were in your position, I would certainly review that court case because, if I understand that case, it says that Brown didn't meet any one of the three tests.

Is that correct, Dr. Gregorian?

Dr. Gregorian. Yes.

Ms. Cantú. My understanding, Mr. Gunderson, is that the status of the case is that the court has asked the university to respond as to whether remedy is possible. I am not even sure the court case is over. I don't know what your sense is of the timing, but my sense is that the judge turned it to the university and asked the university what they thought they might do.

Mr. Gunderson. I want to hear from Dr. Gregorian about that, but in your testimony, you say the three-part test furnishes three individual avenues for compliance. Now, I read that to mean you can meet any one of those three and comply, which leads me to wonder what the problem is here today because if every university is increasing participation in women's athletics, why would they then not comply.

Now, if I were in your position and the court had decided that this university hadn't met "all three," it would be sending me two signals: first, this university hadn't met any one of the three; but, second, it raises the question of whether or not "all three" have to be met. I think there is a real concern. It isn't by accident we have all these people in this room today.

Dr. Gregorian, would you comment on this?

Dr. Gregorian. Yes. Ms. Cantú is right in this sense, that the judge ordered us March, I guess, 29, in a final order. The plaintiffs's lawyer then sued the judge, or whatever it is, intervened saying the judge's opinion was defective or incomplete because he had not provided remedy. And I think yesterday or the day before, or two days ago, the judge has issued yet another order, this time giving us 60 days instead of 120, removing the stay which he had given us before, to come up with some kind of remedy which will include any of the four above things that I mentioned.

Mr. Gunderson. I am confused because, in your testimony, you say that shortly after the enactment of Title IX, you began a process to significantly increase participation by women in program expansion tests you should have met.

Dr. Gregorian. Yes.

Mr. Gunderson. The court said you didn't meet it, directing——

Dr. Gregorian. The court says, What have you done lately? The court has praised—really, it is almost that cynical, I tell you. If we had moved slower initially like other universities, every two years adding one women's team, we would be here now with all the other individuals on the other side saying how wonderful Brown is; instead, we did all of it massively because we believe in it. We didn't do it because, "it was required of us," we did it because we believe in it. Now they say, show us what you have done in the last six years, show us progress. Only one thing was requested: Men's and women's fencing. It went to the University Priorities Center because we have a committee made up of faculty, students, and administrators, and the University Priorities Committee rejected it in 1990. That is the only request in six years we have had.

Mr. Gunderson. Let me go back to Secretary Cantú on this. When you determine compliance, how far back do you go?

Ms. Cantú. We look at all three prongs. We remind ourselves and the university that we are working with there are three separate, independent avenues. The university indicates to us which avenue they believe that they can show that they comply, so they choose. They let us know. Perhaps they tell us they are going to comply under prong two because they are going to describe a story of how they had continuous expansion.

It is not a continuous expansion to start and stop the work. There has to be continuous expansion of opportunities. When the policy guidance was prepared the word "continuous" was inserted because we wanted to take into account that there needed to be equal opportunity. So "continuous" was not just a random word that was just dropped into the standard. It was put in there and then approved by four different circuit courts because it meant that it was a way to provide an avenue that could be met and is being met.

I can cite examples in my office where campuses show, under prong two, that they have the continuous expansion so there is no violation of that part of Title IX.

Mr. GUNDERSON. Okay. Define for us "continuous." I mean, what would be an expansion of women's sports in the last five years, 10 years, that would meet your test of continuous?

Ms. CANTÚ. We generally look at five years, the past most recent five years, but that is not a fixed rule because we try to avoid having a cookie cutter fixed numerical answer. That is not what we want. When the university chooses to prove that it has addressed opportunity under prong two, "history and continuous expansion," it tells us how many years back it wants to go, and we look at that. If it doesn't show a clear pattern of continuous expansion of opportunities, then it doesn't show that. I mean, it is a question of fact.

Mr. GUNDERSON. My time is up.

Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

Ms. Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman.

Ms. Cantú, I hear a great deal of frustration from Dr. Jorns and Dr. Gregorian. Do you feel that the administrative regulators now under your leadership are able to put more emphasis on good faith efforts than on statistical measurements, not forcing—I mean, like when we were talking about field hockey at a school that doesn't play field hockey. How do you respond to that?

Ms. CANTÚ. I have to be very honest and very frank and say that the numbers show up because they inform us, and the numbers let us know how well someone is doing. So, yes, our investigators look at numbers. But we do not let the numbers make decisions for us.

Ms. WOOLSEY. You round that out with——

Ms. CANTÚ. We do not let the numbers become fixed or inflexible or rigid and tell us whether someone is following the law or not following the law. The numbers inform us the way they inform the courts. They tell us where we are. They are a benchmark, a performance measure.

But the numbers don't tell us that the law is being complied with or not complied with. That decision is made in looking at the overall opportunities offered to men as compared to women. And that overall includes testimony we collect. It includes the evidence, statements made by the university. We look at all of that to come to a decision whether the law is being violated.

Ms. WOOLSEY. The decision to mandate a sport like field hockey at a campus that doesn't want field hockey, where does that come in and where do you stop it?

Ms. CANTÚ. There is tension. There are people who have asked me in the two years I have been there to be more specific and more detailed in our guidance and spell out exactly what we want done at each campus. I resist that because the potential is, we could become very intrusive in decisions that should be made at campuses.

So what happens in practice is our staff in the regional offices have conversations, negotiations with the chief executive officers at the campus about what works at that campus. And so when someone asks for information about what does OCR want, we say our bottom line is we want equal opportunity for men and women. How we get there is going to be the result of our discussions.

We always start by asking to add programs. I have verified this. I have called all of our regional offices and have had conversations with each office and they always at the outset ask to add programs. When the universities respond by saying, I can't afford it or for whatever reason don't want to add programs, then we ask the university, well, what are you going to do?

Our bottom line is you are going to offer equal opportunity. We turn to the university and we ask them: How are you going to do that? In Eastern Illinois, I had had conversation with President Jorns; he told me that he felt he couldn't do anything except to cut, that was his decision, so we incorporated that decision when we wrote the agreement. We didn't like it either, that that was going to be the decision, but our bottom line is equal opportunity. We did try, and we would welcome ideas on how to add because we believe that is the best choice.

Ms. WOOLSEY. Well, speaking of adding, can I ask, Dr. Gregorian and Dr. Jorns, isn't the root problem that we aren't investing in our kids in this country, that we don't invest in their education, that we aren't getting them ready for the workforce of the future? If we did invest more on the Federal level and on State levels, would you use some of that money for athletics?

Mr. GREGORIAN. We in the Ivy League are completely different. That is why we are anomalous. We have no athletic scholarships. We admit students on the basis of their promised academic talent. If a student comes to Brown for football, tomorrow morning decides he does not want to play football, we don't say out. Women, the same thing.

The problem that we face is not resource alone. It is proportionality the way the judge has said to us that participation must mirror enrollment. So this year, for the first time, we are admitting 51 or 52 percent women to our university. Wonderful. We have programs for women in science. Wonderful. I encourage this.

Now, I cannot tell these women you had better perform in athletics, otherwise you cause financial problems and I have to go get money. We cannot. It is a completely different thing. We cannot, year in and year out, switch our things. That is the issue we face. Others face the money issue. My money that I put in athletics, with the exception of donors who give, comes from universities on restricted funds.

That is why a university committee consisting of faculty students and administrators decides our priorities. It is not money alone. It is also opportunity. We have only three teams left that we don't have. The judge is asking, cut those three teams and you will be all right. It doesn't matter how many participate in it. It is not the numbers at first. The moment you have the teams, not enough participants.

We have 100 vacancies in participating opportunities in various teams. The judge says opportunity does not count. Actual participation counts. That is why I called it a Catch-22. You create the team, but you don't have the participation, so you are held accountable on participation. You don't have the team, so you are held accountable on the team. What I like is clarity—how many sports, optimum, should universities have. I would like a figure from OCR. Thirty, forty-five, fifty?

Ms. WOOLSEY. I am going to assume that Ms. Cantú is going to work on you. Could Dr. Jorns answer my question or should I be through?

Chairman MCKEON. You should be through.

Ms. WOOLSEY. Well, you aren't doing such a good job after all, Mr. Chairman.

[Laughter.]

Chairman MCKEON. Now that we see how I am being judged and on what standard, let me just have a short follow up on that.

Dr. Jorns, you commented that you were told by the OCR that you weren't pulling your bleachers out far enough. That sounds to me like micromanagement. I heard Secretary Cantú say she didn't believe in micromanagement. How long ago did that take place?

Dr. JORNS. The visit that we had was last year or a year-and-a-half ago.

Chairman MCKEON. So within the last two years, you were told on the bleachers.

Dr. JORNS. Yes.

Chairman MCKEON. Are you aware of that, Secretary.

Ms. CANTÚ. Yes.

Chairman MCKEON. Does that fall within the micromanagement that you are talking about?

Ms. CANTÚ. We are still negotiating with that campus, and they have——

Chairman MCKEON. As to how far they should pull out their bleachers?

Ms. CANTÚ. No. No. Today was the first time I heard of the bleachers issue. Again, I really appreciate people bringing such things to our attention. That helps us so much.

Chairman MCKEON. Now that you know, does that sound to you like micromanagement?

Ms. CANTÚ. It does indeed, and we will go back and take a look at that.

Chairman MCKEON. Great.

Dr. GREGORIAN. Mr. Chairman, may I just answer one thing? We were requested by plaintiffs' lawyers to produce tens of thousands of bills, from socks to jockstraps, everything going back for a few years. Every receipt had to be produced, you know, to show that we had done well. That is the kind of harassment, also, that this cottage industry does in these institutions.

Chairman McKEON. Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman.

I asked a series of questions to the first panel, to our colleagues, and I want to follow up with the same question to Ms. Cantú. Simple question. Does the OCR "require" settlement agreements which include cutting or capping men's programs?

Ms. CANTÚ. No. We have a chart that shows we have had 456 cases. In zero cases, not a single one, have we "required" it. Let me be clear, if a campus "chooses" that as a local decision, we write it up as an agreement, but we do not "require" it. We don't want to do that, but we respect that campuses have to make their own local decisions about their resources.

Mr. ROEMER. Now, secondly, we seem to have two individuals here who are very supportive of Title IX yet very frustrated with the implementation and administration of Title IX. Without putting too many words into Dr. Jorns' testimony and into his mouth, I think he said that OCR dictates the terms of compliance. Whether that is capping or cutting men's programs, which you say you do not do, or mandating what women's programs should be added, do you think it is prudent or fair to dictate what women's programs should be added in the different instances?

Ms. CANTÚ. We would not require or dictate which program, you are right. We have a bottom line which is what Congress requires us to do and that is to afford equal opportunity. When a campus comes forward and says, I want to keep the status quo, we tell them that is not one of their a choices. We do take that choice away from them.

Mr. ROEMER. I would just say, Ms. Cantú, you were not even aware of the bleacher situation before the hearing today, so I think we have accomplished something there, anyway. But it should not take each one of our universities having a hearing to work out better cooperative arrangements before these cases go to a court of law.

Ms. CANTÚ. Sir, usually it does not. Usually we are able to work them out. This is the first time I have had a Congressman call me about an athletics case.

Mr. ROEMER. Let me ask you another question. Does OCR work with schools to avoid compliance problems with athletic programs?

Ms. CANTÚ. Absolutely. We have a strong technical assistance program, and we have a very strong outreach program. I personally have gone to talk to balanced audiences, sports association audiences, women's coaches, all types of groups to ask them to work out problems before they become an OCR complaint.

Mr. ROEMER. And your outreach efforts are equally funded and equally encouraged from an administrative perspective? It is not the school always coming to you. It is you going out to the schools to help them with compliance and to anticipate problems with the administration of Title IX.

Ms. CANTÚ. Yes, sir.

Mr. ROEMER. Secondly, Dr. Jorns and Dr. Gregorian, do you feel that OCR applied each prong of the three-part test in finding violation in Title IX?

Dr. JORNS. I do not. I agree with Dr. Gregorian on that. And if I may make an additional comment, Congressman, I think—and I don't want to put words in Ms. Cantú's mouth—that probably the difficulty that OCR may have is staff. We were to have had a verbal discussion about how to move forward, which we never had, after they visited our campus. And I have here the settlement they sent us which in fact tells us explicitly what sports we are to add and that was brand new to us when I received it, and so I feel that the problem is they simply don't have enough people to cover all the bases.

Dr. GREGORIAN. My answer, Congressman, is that OCR equates equal opportunity with proportionality.

Mr. ROEMER. You are seeing one of the three is applied.

Dr. GREGORIAN. It undergirds all three of them. Without proportionality, there would not be this problem. In my opinion, if you define proportionality, then that will be fine.

Mr. ROEMER. Finally, Ms. Cantú, do you feel that you have a funding problem or a resources problem?

Ms. CANTÚ. Yes. This year that we are in right now, I have a $3 million shortfall. Congress approved $3 million less than what the President requested for my office. Resources are a problem, and I will not dispute that.

Mr. ROEMER. And $3 million is what percent of your budget?

Ms. CANTÚ. Three million of the $58 million, so my math is not great. About 15 percent?

Mr. ROEMER. Can you give me any kind of preliminary indication of how you are going to apply that cut, what you might cut? Will outreach efforts, proactive efforts be cut? What is going to suffer as a result of that? That is not an insignificant amount of money.

Ms. CANTÚ. This is the budget that we are working with. We have looked for efficiencies in trying to resolve complaints as early as possible so that we do not have to invest large amounts of resources in investigating one where a campus is quite willing to discuss with us an early resolution.

But really what has happened is that we have less resources for the outreach that we would like to do and less resources for face-to-face discussions that we would like to have happen. I do want to say, though, that we have top quality staff. We have made it a priority to invest in training. In the past two years, we have put our money in our people first.

Mr. ROEMER. Thank you.

Chairman MCKEON. Thank you.

Mr. Souder.

Mr. SOUDER. Thank you.

Dr. Jorns, I had a question in the evolving of the case that you got involved in. You say you had a number of sports already. Why didn't you have more sports? Was there a demand at the university for more sports? Was there a request? Were you adding sports that were being requested or to recruit students or?

Dr. JORNS. You are asking me, Congressman, if women had requested the sports?

Mr. SOUDER. Yes. In other words, you said you had a number of sports that you had already developed. Was that because of a market demand that more—in order to recruit more women in or did you feel the court pressure coming already? Did you feel——

Dr. JORNS. We added of our own volition one other sport, which was women's soccer. But I will be candid with you, Congressman. We knew that we were under a compliance review, and we felt we were not in compliance. We had a methodology worked out to come into compliance and one of the first was to add women's soccer.

Before that, I can't remember the exact number. I think we had 16, perhaps, women's sports and 18 men. Something like that. We were two or three short on the women's side. I don't know of a group on campus that requested that we add a sport. I have some memory. We have a closed sport, women's rugby, and I think there was some interest in that but that is the only one I can remember.

Mr. SOUDER. I wanted to ask Ms. Cantú, also, do you believe that the *Cohen v. Brown* decision overstepped even your guidelines?

Ms. CANTÚ. No, sir. Every court decision that I have ever read has all three prongs of the test, and the court has examined the record and the facts under each of the three prongs. So, no, sir, I do not believe that there are any differences or disputes that there is consistency in how the Federal courts have treated Title IX.

Mr. SOUDER. Do you agree with that, Doctor?

Dr. GREGORIAN. No, I don't. As I have mentioned, substantial proportionality is what OCR says. The judge says it has to mirror proportionality between enrollment and participation, which gives up to 7 percent in some cases that OCR has settled deviation and variation. The judge leaves no variation, no deviation. Participation has to be exactly proportionate to enrollment. That is a substantial departure.

Mr. GUNDERSON. Would the gentleman yield?

Mr. SOUDER. Yes.

Mr. GUNDERSON. I really appreciate this. Secretary Cantú, you just told me you hadn't read the case and you couldn't state an opinion on it and you just——

Ms. CANTÚ. I have not read the record. I can talk about the law. I cannot apply it the way the court did because——

Mr. GUNDERSON. I asked if you agreed or disagreed with the decision of the court in *Cohen v. Brown*, and you told me you couldn't state an opinion.

Ms. CANTÚ. You asked me for my position regarding the court case, which would require me to know the record. And I do not want to speculate on any facts that I don't know about.

Mr. GUNDERSON. Well, how can you answer his question?

Ms. CANTÚ. His question was about the law in *Cohen* as I understood. Did I misunderstand your question?

Mr. SOUDER. Did it overstep even your guidelines.

Ms. CANTÚ. And the legal application—the legal standard is identical to the standard we apply and all the courts apply. It is the same legal standard. Did I not understand that? I am sorry.

Mr. SOUDER. I think by saying that the decision didn't overstep your guidelines, you in effect made a judgment on the case.

Mr. GUNDERSON. And clearly the court case articulates all three, and you were trying to emphasize to us that only one of the three tests must be met. And the clear implication of court test is, you look at all three of them. As Dr. Gregorian said, it doesn't matter if you have met an expansion if you don't meet the proportionality test and you haven't expanded lately. Either you agree with the ruling of the court or you don't. We have to know.

Ms. CANTÚ. What I want to say is that the court in *Brown* understood the standard and articulated the same standard that OCR uses and all of the other court cases used. What I cannot offer an opinion on is how the court understood the facts.

The testimony you are hearing from President Gregorian is about the facts in the case. How the assessment was interpreted by the judge. What were the right teams? Those are factual questions that I would not want to offer an opinion about, but as far as the legal standard, the judge was absolutely correct, he used the three-part test which we use, which all the other courts including *Cohen* used.

Mr. SOUDER. I thank you. I don't have any further questions.

Chairman MCKEON. And you are aware of that, of the standard he used without looking into that court decision?

Ms. CANTÚ. I have not looked at the record. The record means that I did not examine the transcript; did not read the exhibits, did not examine whatever was introduced as evidence. I should have been more clear when I said I did not look at the record. I meant I did not examine the facts. However, I am familiar with the law in this area.

I have been the law enforcement officer for two years. I have very talented, capable staff and in looking at the law only, it is the same legal standard we all use, the same legal standard that every administration has been using since 1979.

Mr. GUNDERSON. Would the Chairman yield?

Chairman MCKEON. Yes.

Mr. GUNDERSON. So then you are agreeing with Dr. Gregorian that if they had expanded women's programs in the last five years, the judge would have ruled differently and you would have agreed differently, but because they didn't expand women's programs in the last five years, they are guilty of violating Title IX?

Ms. CANTÚ. Could I tell you about cases that we have had in front of us because I haven't investigated this one?

Mr. GUNDERSON. Tell me about *Brown* because we are talking about *Brown*. You said you agreed with the judge's ruling in *Brown*.

Ms. CANTÚ. I agree that he used the correct law. But I am not aware of the record as to how he applied it.

Mr. GUNDERSON. He said that they did not show a recent history of program expansion for the underrepresented sex. Now you have told me you define recent expansion as five years. So, in essence, then, you can only conclude that Dr. Gregorian is right. If they had expanded in the last five years rather than at the beginning of Title IX, they would have been in the compliance; however, because they made the mistake of doing too much too soon, you are now holding them guilty?

Ms. CANTÚ. If the record shows—if the facts are true—that Brown had been continuously expanding opportunities in the past five years, and if we were looking at it [because I can't speak for the judge], we would give them credit for that. We would give them credit for the efforts that prong two called for.

Mr. GUNDERSON. So the message coming out of this hearing today clearly is, you have to expand programs within the most recent five years. Everything you have done previously to 1990 is irrelevant and will not be counted by the Secretary.

Ms. CANTÚ. It is relevant. Continuous expansion means the entire history and continuous expansion. There is an "and," history "and" continuous expansion. The standard we apply is not history "or" expansion in recent years, it is history "and" continuous expansion. So it is relevant to look at history and it is relevant to look at continuous expansion of opportunities. We look at both.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Chairman MCKEON. This little exchange shows me how hard it is just to communicate, and then trying to see that Title IX is correctly administered throughout the country, I can see why we are having these problems. Very difficult.

Mr. Reed.

Mr. REED. Thank you, Mr. Chairman.

I would like to ask a question of Dr. Gregorian and I think it will reiterate his testimony. Dr. Gregorian, you are here in no way to undermine or weaken the scope, the thrust, the purpose of Title IX?

Dr. GREGORIAN. No.

Mr. REED. And——

Dr. GREGORIAN. I am here as a frustrated university administrator who does not like bureaucracies, who does not like to be intimidated by lawyers, and who would like clarity in order to be able to comply with national policy.

Mr. REED. Thank you. And Dr. Jorns, I would presume you would have the same or similar response?

Dr. JORNS. I would.

Mr. REED. Thank you.

Ms. Cantú, let me ask a question. You seem to have a disagreement with Dr. Gregorian and Dr. Jorns and other witnesses about the issue of whether proportionality is the only test. And you quite enthusiastically and sincerely maintain there are three tests, implying no one prong is more superior than another.

Ms. CANTÚ. That is correct.

Mr. REED. But there seems to be, obviously here, a disagreement perceptually if not substantively, perhaps not disagreement with just the presidents of these universities but with the judges who are interpreting these statutes and your regulations. What specific steps can you take to resolve these perceptual differences and to clarify the situation so, as Dr. Gregorian and Dr. Jorns said, that there are clear-cut, workable rules which can be used by universities to achieve the goals of Title IX?

Ms. CANTÚ. What we are working on is to continue to have a dialogue. We are considering everyone's ideas, and we are being open about what we can do to be more clear. It is exactly as the Chairman said, we need more clarity. The tension, I don't want to become so clear that I am prescriptive, that I am intruding on local decisions that campuses must make for themselves. So I am trying to become as clear as I can without crossing that line and becoming intrusive.

What the two college presidents have in common is a problem in meeting prong one, proportionality, and a problem in meeting prong two. Dr. Jorns couldn't show a history of expansion and Dr. Gregorian is saying he has a history of expansion, but cannot show continuous expansion. I don't want to put words in your mouth, but there is a problem with both of them in meeting prong two, so the request then is for clarity as to what prong three means, addressing the interest and abilities, because we have to have qualified athletes, interests and abilities of students.

We don't want to be so prescriptive in clarifying prong three that we shut the door on ways that campuses can meet that prong. If a campus chooses prong three, then we want to be open at OCR to hear how they are going to prove that prong three has been met. And if I tell the campus the only way you can show it is by how many club sports there are on your campus that are female that are not full varsity sports, so if I tell a campus the only way you can meet is what the pool looks like of the high school students, or I tell the campus the only way you can meet is by comparing yourselves to other colleges in your conference or league, then I am foreclosing choices.

What I am telling my investigators is listen. Hear what the campus is trying to tell you about prong three and then have a discussion with that campus. Eastern Illinois is working towards coming into compliance with Title IX. They have a long way to go. They start at only 25 percent women athletes. Twenty-five percent women athletes. But they are going to get there under prong three. I am optimistic that is going to happen.

Mr. REED. I believe Dr. Jorns, Dr. Gregorian, you might want to comment.

Dr. GREGORIAN. Yes. I ask this simple question, namely, is there a difference between substantial proportionality and mirror proportionality. English is my last language, so my English may be poor, but I would like to understand, is there a difference? If there is difference, then Ms. Cantú is wrong. She does agree with the judge's interpretation of prong one as being mirroring rather than merely being substantial proportionality. The judge did not say it is a defective mirror. You can have 7 percent deviation, or Madam Tussaud's kind of mirror. It says mirror. Mirror means mirror and it is simple, reflecting exactly realities of day. How can we fudge this issue? I don't know.

Mr. REED. Let me follow up with a final question because the time is all but going. One of the problems or one of the technical points with the continuous improvement is, what is the terminus point? What is the end point of continuous improvement?

So do you have an idea in your regulations or your policy what would be the end point? How—I know institutions have to make continuous improvement but to what?

Ms. CANTÚ. Toward equal opportunity, which is the goal that Congress has set us towards.

Mr. REED. How do you define equal opportunity?

Ms. CANTÚ. What Congress has defined for us is that women or men may not be subject to discrimination, not be excluded or denied participation, the regulations that were signed and approved by Congress are what we follow. And the policy guidance which we have been using since 1979 is what we have been following.

We do feel this tension, Congressman, between how detailed and how prescriptive we can be, and I do want to resist being drawn into a position where I am telling a campus, this is the sport you must add or telling a campus you have no choices as to whether you want to drop a sport or not. I really resist offering more detail without more discussions, and we are continuing to have groups that are continuing to inform us.

Mr. REED. I appreciate your very, very diligent and sincere efforts to resolve this. My time is up, Mr. Chairman, but I believe that Dr. Jorns wants to say something.

Dr. JORNS. I just wanted to make one observation and that is that—and I don't think anyone wants the government to be prescriptive—the lack of clarity is causing, as Dr. Gregorian said, a cottage industry to rise up. For example, we have now engaged a consultant who I think used to work for OCR to help us determine how to write a correct interest and abilities test. And yet we have been told here today that they don't want to impose a standard on us, just let us work it out. Well, clearly, there is a standard, and we have engaged a consultant, so there are a great many people now available who make a great deal of money that we really can't afford to spend trying to fill that gap.

Mr. REED. Thank you, Mr. Chairman.

Chairman MCKEON. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, thank you for indulging me there for a moment. Let me welcome the panelists and thank them for being here. It is a pleasure, Dr. Gregorian, to see you again, and Ms. Cantu, it is always a pleasure to have you come before the subcommittee.

Let me ask a couple of questions. I have missed most of the oral testimony. I was able to look over some of the written testimony, and I have had a chance to listen to some of the dialogue over the last 15, 20 minutes.

Dr. Gregorian, let me ask you for some specific, some concrete ideas on how Ms. Cantu and her office could try to help universities that wish to comply do so in a way that removes as much of the bureaucratic burden as possible from your efforts.

Dr. GREGORIAN. Thank you, Congressman.

Let me mention, I have followed this court case very closely. I may be the only living soul, other than the stenographer, who has read everything, so if I jump from one subject to another, forgive me. This is the frustration—interest and ability—just as the prong three or part three. It says you have to evaluate what the interest is. Where does a college president go to evaluate? College board, right? We have admitted SATs. So we ask on the SAT application form to include all the interests that athletes have listed. Students who are interested in athletics list number one, two, three priority. The judge says that is not acceptable. Right. Why? OCR does not say which of these surveys is acceptable.

Where is there an acceptable survey? Is it Gallup Poll? We will go to Gallup Poll. Harris Poll? Harris Poll. Newsweek? Newsweek. U.S. News? Whoever. We want a name. What is the most accepted standard of interest and abilities? And we will check. We have gone over 14,000 transcripts, one by one, 14,000 transcripts, to see which women who have applied to Brown are interested in which sports. You know which one they are interested in most? Equestrian. Eight hundred interested. We don't have stables. I am looking to see what Newport and so on can provide. No, I am serious. If that is the interest, if we find a donor, we will do it.

However, we brought this to the judge, and he says this is not an acceptable method. The NCAA guidebook was also rejected by the judge as unacceptable. OCR does not say the NCAA guidebook is a valid legal document. So what do I do?

Mr. BECERRA. Let me see if I can get you, then, to focus on some specifics if you haven't already mentioned them in the hearing. Are you saying, then, OCR should give you the specifics of those types of things that would fall within the criteria for a university to try to achieve?

Dr. GREGORIAN. Yes. OCR says surveys are one way you can assess ability. But it doesn't say who, what, and so forth. So it allows any lawyer, any judge to question that our surveys are unscientific.

Mr. BECERRA. Okay. So you would like to have more detailed parameters than what you have now.

Dr. GREGORIAN. Clearer, because if you give lawyers 100 pages to detail, then we will not be able to do anything.

Mr. BECERRA. Clearer. Dr. Jorns, any particular comments on that?

Dr. JORNS. No. I think that is correct. I believe that the interests and abilities prong is the correct one to use and that it needs to be clarified, discussed early, and probably you need to cut it to the region you are in. But if that were applied, I think it would be fair and we would be able to add sports that would be appropriate for the students who are coming to us and the students who are with us.

Mr. BECERRA. Okay. I have two more questions. I am going to try to get through these two quickly.

Ms. Cantú, short of speaking to a university's administration at the point where you are prepared to take action against them, what can your office do or what does it do to try to collaborate with the universities, the schools as much as possible, to give them the carrot to do the work better?

Ms. CANTÚ. The main way we reach out is through technical assistance. Campuses call us before a complaint is filed and ask us, what do your standards mean? Can we have a discussion? We also reach out through these kinds of discussion groups that we have been hosting, where we invite university people to talk to us and then our staff go out and meet with university counsel.

We talk about our standards with them. We meet with a variety of collegiate associations. A couple of weeks ago, I was at an NCAA meeting to meet with NCAA members about what our standards mean. They cooperated by publishing the entire text of my explanation in the NCAA News. So we are trying the best we can to be visible, to share information with both the universities and the student body.

Mr. BECERRA. Is the outreach proactive, you go out and talk to universities before they ever contact you?

Ms. CANTÚ. Yes. It is both ways. Universities call us, but we also take the initiative to pull together a meeting. We will host a conference. We have done that.

Mr. BECERRA. Mr. Chairman, if I may be permitted one last question. And this one strikes closer to my heart.

I now have two daughters, and I will be interested to make sure that they have every opportunity to participate in sports, if and when they wish to, when they get to be college age, if I can afford to get them to college. I had a bill when I was in the State assembly in California a few years back to try to help bring closer parity when it came to sports in high school because, especially in California where there is such a large population, there were dramatic differences in certain schools when it came to the opportunities for young women to participate in sports.

But I must tell you, I found the worst resistance I had ever seen from my own peers, men, when it came to trying to make the facilities and resources available for young women to participate in sports. Obviously, of course, I can understand their concern. They saw a dollar going to female sports as a dollar leaving male sports.

And I must tell you that it was so disturbing to see the lack of comity on the part of all the players, mostly from the men's sports side. I found it almost impossible to get anywhere. I had a difficult time getting my bill heard in committee because there was such a lobbying effort to stop it from even getting heard. I heard every excuse for it not being passed out of committee, and in fact every excuse offered in testimony was provided by a woman defending the status quo. It was very interesting, all the people who were lobbying me privately were men. All the people who testified against the bill were women.

How do you break the cycle? It is a vicious cycle where we know there is a lack of money by most schools to provide adequate sports for all of its student body. How do you break the cycle when there is such competition, such an attempt to hold on to whatever dollars you have, understandably, and yet try to fulfill the requirements of providing everyone with an equal opportunity?

Dr. GREGORIAN. Congressman, first of all, you should send your daughter to Brown, number one.

Mr. BECERRA. I will talk to you about that.

Dr. GREGORIAN. We are an educational institution rather than a physical education institution.

Mr. BECERRA. Please remember that statement.

Dr. GREGORIAN. Absolutely. I said that in public. It is very important. You were not here this morning when I testified. One thing must be very clear. Ivy League, unfortunately or fortunately, is not like other leagues because we do not have scholarships, athletic scholarships. We have need-based admission. As a result, we are facing, therefore, problems.

We admit students first as scholars, then we try to see what their athletic, musical, and other needs are. As the numbers increase, we face the issue of proportionality. We don't have an athletic budget coming from television revenues or so forth. Unfortunately, I said, we also don't have a football team like Notre Dame and others. We are amateur hour in athletics. We are proud of it. Amateur athletes, that is what NCAA was supposed to be.

Mr. BECERRA. Doctor, can I ask you to address the specific point of how do you break the cycle? Those men's sports will not let go of the grip of their money to schools.

Dr. GREGORIAN. Men do not access it. Administration have to be accountable. We have accommodated since 1972. Before, even when Pembroke joined Brown, we started accommodating women's needs. We did not wait for Congress to tell us. More sports are offered at Brown, 18 versus 16 men's sports. If people want to give money, we can add more. I am not going to put more money from the instruction budget into the athletic budget because we are interested in people's brains as well as their body.

Mr. BECERRA. Thank you.

Thank you, Mr. Chairman.

Chairman MCKEON. Thank you.

The comment that you made about people that were opposed, here we have people who are all working together yet still haven't been able to work it out.

Mr. BECERRA. But they still support the bottom line. That is important. I didn't find that type of cooperation or even support for the efforts at the State level when it got down to the nitty-gritty.

Chairman MCKEON. In the California assembly, what do you——

Mr. BECERRA. Good thing we are here, Mr. Chairman, right.

Chairman MCKEON. I was fortunate never to have served there. I think this has been enlightening. I think there have been some real good points made, and I think that probably there are some things that we are going to have to go back and look at. You know, Secretary, you said you didn't want to be intrusive or obtrusive, but it sounds like some of your people have been or are being and we do need to probably work on those guidelines and on communication. We appreciate you being here today. And we will excuse you now and move to our final panel. Thank you very much.

Okay. We will move on. We appreciate your patience and the time you spent with us today.

We will have on this third and final panel Dr. Christine Grant, Director of Women's Athletics from the University of Iowa; Mr. T.J. Kerr, wrestling coach from California State University, Bakersfield, just north of me; Ms. Wendy Hilliard, President, Women's Sports Foundation, East Meadow, New York; Mr. Charles Neinas, Executive Director of the College Football Association, from Colorado; and Mr. Rick Dickson, Director of Athletics from Washington State University in Pullman.

We have already been through the instructions. You learned about the trap door and we will start with Dr. Grant.

[Laughter.]

STATEMENT OF CHRISTINE H.B. GRANT, DIRECTOR OF WOMEN'S ATHLETICS, UNIVERSITY OF IOWA, IOWA CITY, IOWA

Dr. GRANT. Thank you. Thank you very much for providing me with the opportunity to comment today. And as I listened this morning to the several people who reiterated their great support for Title IX, I am left with a question. Why is it today, in 1995, that men enjoy twice as many participation opportunities at the intercollegiate level as women. Why?

From the late 1800s until 1972, men at the intercollegiate level enjoyed all of the varsity participation slots in the entire country, opportunities often financially supported by both institutional funds as well as student fees from both male and female students. Thus, at many institutions, not only were women denied the opportunity to participate in varsity sports, they were required to financially support the athletic opportunities for men. Most men also received a totally free education, which today is valued up to $100,000 per person. Talented female students, however, not only subsidized male athletes, but they also paid for their entire education and additionally the cost of participating in club sports.

Although Title IX passed 23 years ago, men today still command the lion's share of all sporting opportunities. Lest you think Title IX has gone too far, the 1992 NCAA gender equity study showed that women in Division I-A received only 29 percent of participation slots and 28 percent of athletic scholarships. In most instances, student fees from women undergraduates are still used to support twice as many participation slots for men as for women.

Would such biased practices be accepted in any other area of our universities? I think not. Such practices violate both the letter and the spirit of Federal law. Rather than having hearings to determine how to protect football or men's sports, our Congress should be having hearings on what must be done immediately to end discriminatory practices at all levels of our educational institutions that are supposedly equally committed to both young women and young men.

We are not talking about professional sports here. What we are talking about is giving youngsters an equal opportunity to experience the joys, the challenges, and the educational lessons of sports that directly contribute to their growth and their development as individuals.

I primarily fault the CEOs at our educational institutions for our current situation. For more than two decades they have known the requirements of Federal law and could have moved gradually into compliance. Most did not. In recent years, with the resurgence of a demand by female student athletes for equal opportunities, this coincided with a time in which most universities found themselves in financial difficulties. Many of us hope that the CEOs would mandate nationally cost containment measures, especially in Division I, which has numerous excesses in football and men's basketball. Together, these two sports command 73 percent of the entire men's budget. You have these charts, I believe, before you.

Significant cuts were not made and the budgets have escalated. One of the charts that I have supplied shows that for every new dollar put into women's sports, three new dollars have gone into men's programs.

Through a proactive stance, the CEOs have averted the current situation which now pits men's minor sports against women's sports—the have-nots against the have-nots—leaving intact enormous football and basketball expenditures and deficits.

Blaming gender equity for the demise of men's minor sports is a red herring. They are being dropped because CEOs will not address the problems of habitual excessive spending at the institutional level or the national level. Yet despite the fact that some men's sports have been dropped, men's participation opportunities overall have increased by 12,000 over the past four years.

Chairman McKEON. Dr. Grant.

Dr. GRANT. Yes.

Chairman McKEON. Could you just conclude, please.

Dr. GRANT. Yes, I will. I have shared with you an impressive list of institutions that have made the commitment to equal opportunity, and I believe that if we can have cost containment at the national level we can [a] balance athletic budgets, [b] retain men's minor sports, and [c], expand women's opportunities.

Over 2 million girls participate in high school, but only 105,000 are participants in the NCAA. Equitable sporting opportunities for women can and must be realized, or none of us will be able to look our daughters or granddaughters in the eye to explain why not.

Thank you.

Chairman McKEON. Thank you. I hope we haven't given you or anyone else the wrong impression—you alluded to a hearing to protect football and men's sports. I think we bent over backwards to make this an open and impartial hearing, and I hope no one has the wrong impression because that certainly is not what we are doing.

[The prepared statement of Dr. Grant follows:]

May 9, 1995

TESTIMONY BEFORE THE U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON POST-SECONDARY EDUCATION, TRAINING AND LIFE-LONG LEARNING

Christine H.B. Grant
University of Iowa

Representative for the
National Association of Collegiate Women Athletics Administrators

Thank you for providing me with the opportunity to comment on the status of intercollegiate athletic programs across the nation and the need for continued strong support of the current Title IX legislation and interpretation. What follows are:

1. A Brief Analysis of the Problem
2. Title IX Informational Points
3. Fallacies & Facts

A BRIEF ANALYSIS OF THE PROBLEM

From the late 1800's until 1972, men at the intercollegiate level enjoyed **all** of the varsity participation slots in the nation, opportunities often financially supported by both institutional funds as well as student fees from both male and female students. Thus, at many institutions, women were not only denied the opportunity to participate in varsity sports, they were also **required** to financially support the athletic opportunities for men! Any women who desired to participate in club sports (the highest level of sport available to women) then had to pay for these opportunities out of their pockets again. Of course, men in varsity sports had all expenditures paid for them and, in addition, most received a totally free education, which today costs anywhere up to $100,000 each.

Although Title IX passed 23 years ago, men still command the lion's share of all sporting opportunities. The 1992 NCAA Gender Equity Study, shows that women received only 29% of the participation opportunities and 28% of all athletic scholarships. In most instances student fees from women undergraduates are still used to support more than twice as many participation slots for men as women. Would such biased practices be accepted in any other area of our universities? I think not. What an injustice! What a farce it makes of both the letter and the spirit of federal law!

Rather than having hearings to determine how to protect [illegible] Congress should [illegible] done immediately to end these discriminatory practices at [illegible]

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levels of our educational institutions, that are, supposedly, equally committed to both young women and young men. We are not talking about professional sport here; we are talking about giving youngsters an equal opportunity to experience the joys, the challenges and the educational lessons of sport that directly contribute to their growth and development as people.

I primarily fault the Chief Executive Officers at our educational institutions for the current situation. For more than two decades, they have known the requirements of the Federal law and could have moved gradually into compliance. Far too many chose to take as long as they could to do as little as possible. In recent years, there has been a resurgence of a demand by female student-athletes for equal opportunities, coinciding with a time in which most universities found themselves in financial difficulties. Many hoped that the CEOs, through the NCAA Presidents Commission, would mandate cost-containment measures in intercollegiate athletics, especially in Division I. They could have eliminated the excesses in football and men's basketball and demanded reform of our costly recruiting system. On a national level, we could, for example, prohibit these teams from staying in hotels the night before home games; we could also drastically reduce their flashy 200-page media guides. These are but two examples of practices which cause 73% of the entire men's budget to go to these two sports. Through a proactive stance, the CEOs could have averted the current situation which now pits men's minor sports against women's sports (the have-nots against the have-nots), leaving intact enormous football and basketball expenditures and deficits. Blaming gender equity for the demise of men's minor sports is a red herring; they are being dropped because CEOs will not address the problem of habitual excessive spending, either on the institutional or the national level.

Although few schools have achieved compliance with Federal law, it can be done. I am happy to share with you an impressive list of institutions that have made the commitment to equal opportunity and are progressing toward that goal without dropping men's sports. The list reveals that lack of opportunity, not lack of interest has kept women from participating in intercollegiate athletics. If, at a national level, we can cooperate to achieve real cost containment in the areas I have mentioned, I am convinced that we will be able to accomplish three important goals:

a. expanding women's participation opportunities
b. retaining men's minor sports
c. balancing athletic budgets

Given the facts I have presented today coupled with the additional data in my written testimony, it is preposterous for us to be considering anything other than expanding the opportunities for women to participate in sport. Equitable sporting opportunities for women can and must be realized, or none of us will be able to look our daughters or granddaughters in the eye to explain "why not".

TITLE IX INFORMATIONAL POINTS

- Passed in 1972, Title IX was intended to eliminate discriminatory practices in educational institutions. Discrimination continues in 1995.

- A lack of finances **CANNOT** be a reason for discrimination; additional financial resources must be directed to women and/or a redistribution of financial resources must be made on each campus. To do otherwise is to force the group that has historically been discriminated against to continue to bear the burden of discrimination.

- There can **NEVER** be an acceptable justification for discriminatory practices in educational institutions.

- In Cook v. Colgate University, the court stated:

  > Equal treatment is not a luxury. It is not a luxury to grant equivalent benefits and opportunities to women. It is not a luxury to comply with the law. Equality and justice are not luxuries. They are essential elements which are woven into the very fiber of this country. They are essential elements now codified under Title IX. Many institutions of higher education apparently hold the opinion that providing equality to women in athletics is both a luxury and a burden. The feeling seems to be that to afford such equality to women is a gift and not a right.[1]

- Each institution has the right to create its own gender equity compliance plan which may employ one or more of the following procedures in order to reach a male/female participation ratio in athletics similar to that in the undergraduate population:

  - add new intercollegiate teams for women
  - cap the number of participation slots on men's teams
  - eliminate some men's teams (this is not recommended by women and should be considered only as a last resort)

- If an institution decides it will not allocate new monies to its women's program to come into compliance with Federal law, then that institution must adopt one or more of the following procedures in order to free up money for women:

  - reduce expenditures in men's sports (this could be done at the national level if enough CEOs would support it)
  - reduce expenditures at the national level for both men's and women's sports, e.g. reform the recruiting and/or scholarship systems
  - consider moving the athletics program to a less costly divisional affiliation
  - eliminate some men's sports (this is not recommended by women and should be considered only as a last resort)

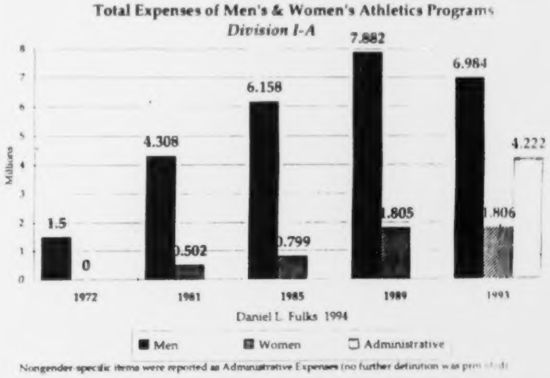
- "An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics."[2]

- We hope that you, like us, will continue to give your full support for true equity so that your daughters and granddaughters in the future will enjoy the same opportunities and benefits as your sons and grandsons.

FALLACIES & FACTS

FALLACY: Funding women's sport will bankrupt men's sports

FACT:



Total Expenses of Men's & Women's Athletics Programs
Division I-A

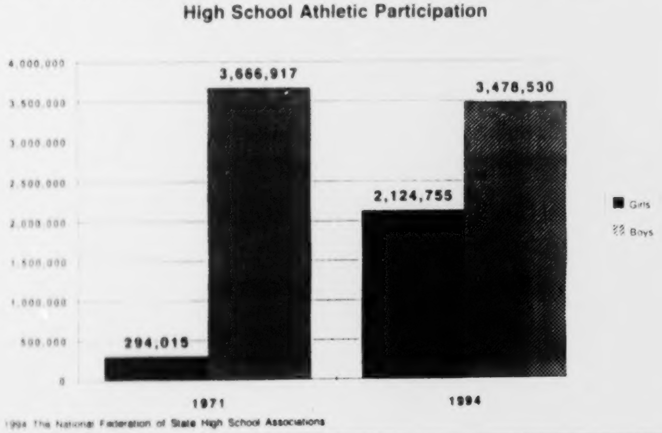
Daniel L. Fulks 1994

Nongender specific items were reported as Administrative Expenses (no further definition was provided)

NOTE: Since the enactment of Title IX, for every new dollar spent on women, two new dollars were spent on men.[3]

FALLACY: Women are just not interested in sport

FACT: In the 1970's when Title IX was beginning to be enforced, girls' participation in interscholastic sports exploded from 8% to 35%; at the intercollegiate level, it jumped to 30%. **IT IS NOT A LACK OF INTEREST, IT IS THE LACK OF OPPORTUNITY![4,5]**



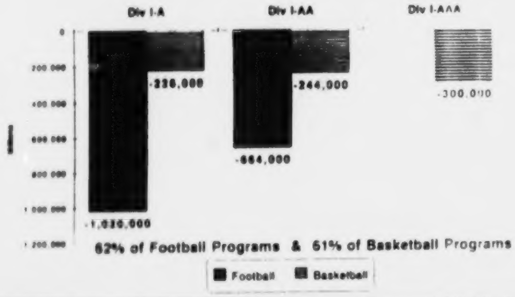
High School Athletic Participation

1994 The National Federation of State High School Associations

FALLACY: Football funds all other sports for men and women.

FACT: According to 1993 financial data (Fulks), 62% of Division I-A and I-AA football programs on average have annual deficits of $1 million in Division I-A and $664,000 in Division I-AA. (61% of all Division I men's basketball programs also show annual deficits.)[6]

1993 Average for Institutions Showing Deficits



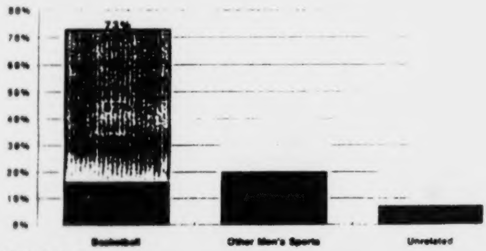
FALLACY: Women's sports are destroying men's minor sports.

FACT: Some men's sports are being dropped because there is not a collective resolve among CEOs to eliminate the excesses in football and men's basketball programs. Expenditures in Division I-A show the following breakdown for men's sports:

Football: 57%
Basketball: 16% → 73%
Other Men's Sports: 20%
Unrelated Expenses: 7%
100%

NOTE: You will note on the next page that 80% of the operating budget goes to men's sports, only 20% to women's sports.[7,8]

1993 Average NCAA Division 1-A Men's Programs Expenses



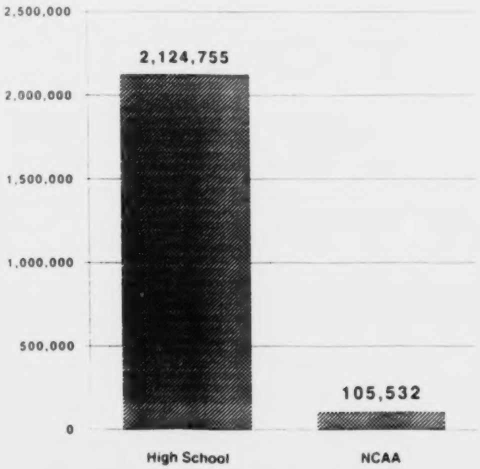
Donna L. Fulks · 1994

FALLACY: Colleges are currently meeting the needs and interests of women in intercollegiate sport

FACT: a) Most universities have women's club sports that would love to be elevated to intercollegiate status;

b) At the high school level, over 2 million girls participate in interscholastic sports; in the 1993-94 year, there were only 105,532 participation opportunities for women in the NCAA.[9]

NCAA and High School Female Participation Levels



The National Federation of State High School Associations & The NCAA News

FALLACY: Most universities are close to being in compliance with Title IX.

FACT: These are the facts documented by the NCAA in 1992:

Division I-A Results	Female	Male
Participation	29%	71%
Athletics Scholarships	28%	72%
Operating Budget	20%	80%
Recruiting Budget	16%	84%

NOTE: On an annual basis, male athletes receive approximately $179 million more than female athletes in athletics scholarship monies. (Women's Sports Foundation)

FALLACY: Interpretations on how to comply with Title IX are too rigid.

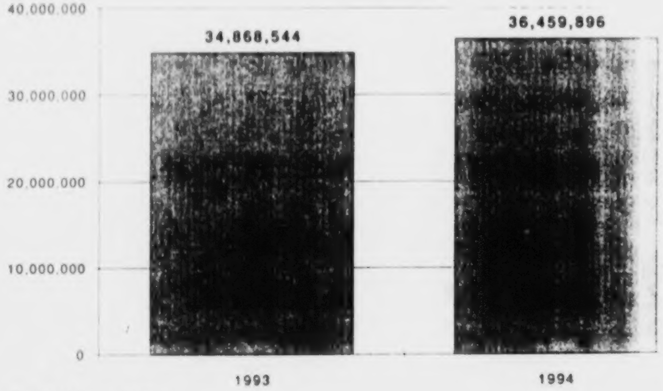
FACT: The current Office for Civil Rights interpretation provides schools with many legitimate and reasonable ways to comply with Title IX. It is noted in the recent NCAA publication "Achieving Gender Equity, a Basic Guide to Title IX for Colleges and Universities" that the "policy interpretation allows institutions great flexibility in providing benefits and services to female and male athletes" (page 6).[10] The current phenomenon of cutting men's sports is the result of institutions' past inaction, rather than unyielding Title IX interpretations. For 23 years, most institutions have chosen to address Title IX through rhetoric rather than action. Now, deteriorating economic conditions, along with belated pressure from Federal courts and a committed Office for Civil Rights, are forcing institutions into long-overdue decisions. **Due to the lack of long-range planning and national and/or institutional cost-containment measures, some institutions are choosing to achieve equity by shifting funds from men's sports to new or upgraded women's sports while still fully protecting football and men's basketball.** Rigidity of compliance is not the culprit; institutional inaction over the past two decades and current institutional choices are the causes of the problems.

FALLACY: The attainment of equal opportunities for women in sport will result in less competitive and less successful football teams.

FACT: Over the past three years, athletics scholarships in football have been reduced from 95 to 85, yet in 1994, the first season after the reduction, national football attendance records were set in all three divisions.[11] The total increase in attendance from 1993 was 1.6 million. This may well have resulted from less stacking of players at traditional powers and the start of a trend toward parity between teams. Since the lure of sport is its unpredictability, this trend toward increased parity should be continued.

NCAA Football Total Attendance

All Four Divisions: 568 Teams



The NCAA News - 1/4/95

FALLACY: **To be in compliance with Title IX, there must be exactly the same ratio of male/female student-athletes at an institution as exists in the undergraduate population.**

FACT: **The American Football Coaches Association's (AFCA) doomsday predictions of loss of federal funds and elimination of football programs resulting from OCR's alleged increased emphasis on the Proportionality Test are unfounded.** In fact, there remain three ways in which an institution can comply:

1. **demonstrate that** participation opportunities for each sex are porportional to **enrollment**

OR 2. **show a history** of expansion in its women's athletics program

OR 3. **demonstrate that** the interests and abilities of members of the underrepresented **sex have been fully** accommodated by the present program.[12]

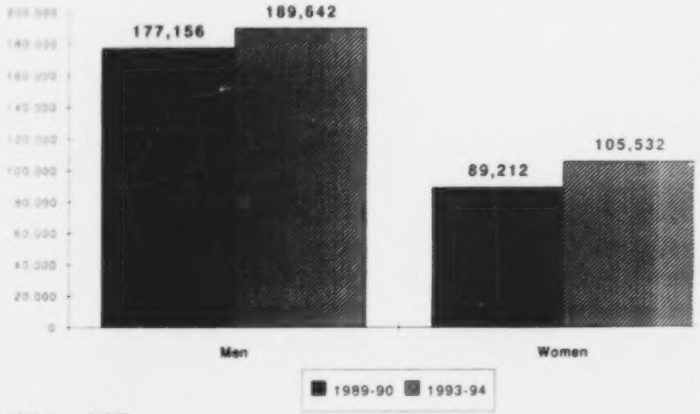
It will be difficult, **however**, for an institution to comply with #3 if there are women's club sports on campus that would wish to be elevated to intercollegiate status.

This three-pronged **test was** part of the 1979 Policy Interpretation; it is not a new concept.

FALLACY: **Men are losing** a massive number of participation opportunities because of women's athletics.

FACT: According to the NCAA, the number of participants in women's sports increased between 1989 and 1994 by 16,320 **BUT THE NUMBER OF PARTICIPANTS IN MEN'S SPORTS ALSO INCREASED BY 12,486 GIVING THEM 64% OF ALL OPPORTUNITIES.**[13]

Participation Growth for Men's & Women's NCAA Sports



NCAA News 2/15/95

FALLACY: The Javits Amendment excludes football from Title IX requirements.

FACT: ON 4 DIFFERENT OCCASIONS, CONGRESS HAS REFUSED TO EXCLUDE FOOTBALL OR OTHER REVENUE-PRODUCING SPORTS FROM TITLE IX. The Javits Amendment stated that legitimate non-gender related differences in sports could be taken into account, e.g. the differing costs of equipment or event management expenditures. The amendment does not protect football simply because it has a higher number of participants or there is not a similar sport for women.

FALLACY: There is very litle support for real equity.

FACT:

Big Ten Handbook
Statement of Guiding Principles

Equity

All member universities shall assure the fair distribution of resources, access to facilities and treatment of student-athletes and personnel.

The Big Ten Conference acknowledges a responsibility to assert the value of achieving equal participation by men and women in intercollegiate sports.

FALLACY: Achieving equity is an unreasonable goal.

FACT:

University of Iowa Path to Equity for Athletic Scholarships

	Men	Women
1. Number of Sports	10	10
2. Current NCAA max scholarships	63%	37%
3. After 1994 10% reduction of men's (18.6)	60%	40%
4. NCAA GE Task Force proposed increases	57%	43%
5. Add crew (20) over 4 yrs 1994-95	53%	47%
6. Add soccer (16) over 4 yrs 1995-96	51%	49%
7. Equity will be achieved in scholarship pool, provided Women's Athletics offer a higher % of out-of-state scholarships than men.		

FALLACY: Men's minor sports will have to be reduced if women's participation slots are increased.

FACT:

Institutions Adding Women's Teams Without Dropping Men's Teams

Note: These data were collected from the "ETC" section in The NCAA News from the Summer of 1992 through April 1995. In this section, institutions announce the elimination and/or the addition of sports. In the following instances, there was no mention of the elimination of men's sports.

Alabama	Soccer - 93
Alfred	Softball 93/94, Lacrosse 94/95 Cross Country - 94/95
Allegheny	Lacrosse - 94/95
Allentown	Track & Field 93
Anderson	Soccer 93
Auburn	Soccer
Augsburg	Golf
Baylor	Softball
Barry	Crew
Bethune-Cookman	Golf, Track & Field
Boston College	Ice Hockey
Brigham Young University	Soccer 95/96
California	Golf
California State-Fullerton	Volleyball, Soccer
California State-Los Angeles	Soccer
Carthage	Golf
Case Reserve	Softball
Catawba	Swimming 93
Central Connecticut State	Soccer 95/96
Central Missouri	Soccer 95/96
Chapman	Cross Country, Track & Field
Cincinnati	Rifle
Colgate	Softball
Creighton	Crew
Dartmouth	Volleyball, Softball 94/95
Davidson	Lacrosse
Delaware State	Soccer 94/95
Duquesne	Soccer 94/95
East Carolina	Soccer 94/95
East Stroudsburg	Swimming 95/96
Eastern Kentucky	Golf
Evansville	Soccer 94/95
Fitchburg State	Soccer 93/94
Florida Atlantic	Softball 94/95
Florida Southern	Golf 94/95
Fordham	Soccer 93
Francis Marion	Cross Country 92, Soccer 95/96
Furman	Soccer 94/95
Gannon	Cross Country 93
George Mason	Lacrosse 93
Georgia Southern	Soccer 93
Georgia State	Soccer 93
Greensboro	Cross Country
Harvard	Golf
Jacksonville	Track & Field 92
Jersey City State	Soccer 93
Juniata	Soccer 94/95
Kentucky Wesleyan	Golf & Soccer 93
Lehman	Water Polo 94/95
Long Island-SW Post	Soccer 94/95
Loyola Marymount	Soccer
Marist	Soccer
Marquette	Soccer, 93
Marshall	Softball 93
Merrimack	Field Hockey 93
Millersville	Soccer 94/95
Misericordia	Swimming 94/95
Missouri-Kansas City	Track & Field 93
Monmouth (NJ)	Lacrosse
Moravian	Soccer 94/95
Murray State	Golf 93
Nebraska - Kearney	Golf 93
Nebraska Wesleyan	Soccer - 93
Norfolk State	Tennis 92
North Carolina-Charlotte	Soccer 94/95
Northern Colorado	Cross Country 93
Northern Illinois	Soccer 92
Northwood	Soccer 94/95
Oakland	Soccer 94/95
Ohio State	Soccer 93/94
Olivet	Golf 93
Pembroke State	Track & Field 94/95
Penn State	Soccer 94/95
Pepperdine	Soccer 93
Purdue	Softball 93
Regis (CO)	Golf 93
Regis (MA)	Field Hockey
Rhode Island College	Soccer 95/96
Rider	Cross Country, Track & Field - 93
Rochester (NY)	Upgrade lacrosse 94/95
Roger William	Cross Country 92
Sacred Heart	Tennis 93
St. Anselm	Volleyball 93
St. Catherines	Basketball 95/96
St. Cloud State	Soccer 94/95
St. Francis (PA)	Swimming 94/95
St. John's	Upgrade volleyball to varsity 94/95
St. Joseph (PA)	Lacrosse 92
St. Rose	Track & Field 93
Salisbury State	Soccer 94/95

FACT CONTINUED:

Institutions Adding Women's Teams Without Dropping Men's Teams con't

San Jose State	Diving 93/94 Cross Country 94/95
Savannah A & D	Basketball 93
Seton Hall	Soccer 94/95
Slippery Rock	Soccer 93
South Alabama	Soccer 94/95
Southern Colorado	Softball 93
Stanford	Synch. Swimming 93 Lacrosse 94 Water Polo 95 Softball 93
Temple	Swimming Upgrade Crew Soccer
Texas Tech	Soccer 94/95 Softball
Trinity (Texas)	Golf 94/95
U. of Arizona	Soccer 94/95
U. of Calif - Irvine	Crew
U. of Denver	Upgrade Lacrosse 94/95
U. of Florida	Soccer 93
U. of Indiana	Soccer 93
U. of Iowa	Crew 94/95
U. of Massachusetts	Reinstated Tennis, Lacrosse, Volleyball Proposed Water Polo and Crew
U. of Minnesota	Soccer 93
U. of Missouri	Soccer 96/97
U. of New Mexico	Soccer
U. of Oklahoma	Reinstate Basketball
U. of South Carolina	Reinstate Softball & add Track & Field
U. of Southern California	Soccer 93
U. of Texas - Austin	Soccer 94, Softball 97
U. of Utah	Soccer 95/96
U. of Wisconsin	Softball 94, Lacrosse 96
Wagner	Soccer 93
Wake Forest	Soccer 94/95, Field Hockey
Washington (MO)	Reinstated Cross Country 93
Washington & Lee	Basketball 93
West Chester	Soccer 92
Wingate	Cross Country 93
Winthrop	Track & Field 93
Wisconsin-Superior	Soccer 93,
	Reinstate Track & Field 93
Worchester Polytechnic	Soccer 95/96

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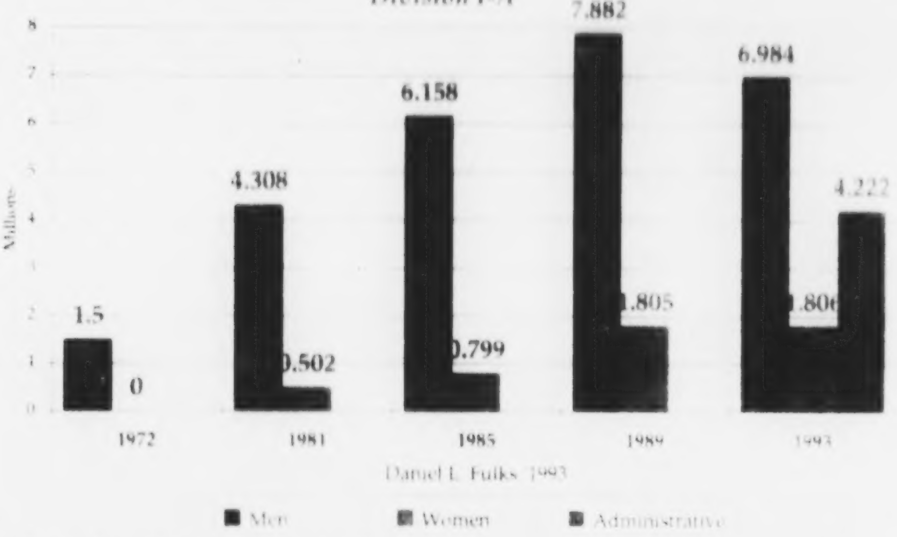
13. "Participation Numbers Narrowly Miss Record", **NCAA News**, February 15, 1995, Vol. 32 #7 p. 1, 13.

Total Expenses of Men's & Women's Athletics Programs
Division I-A



Daniel L. Fulks 1993

Nongender-specific items were reported as Administrative Expenses (no further definition was provided)

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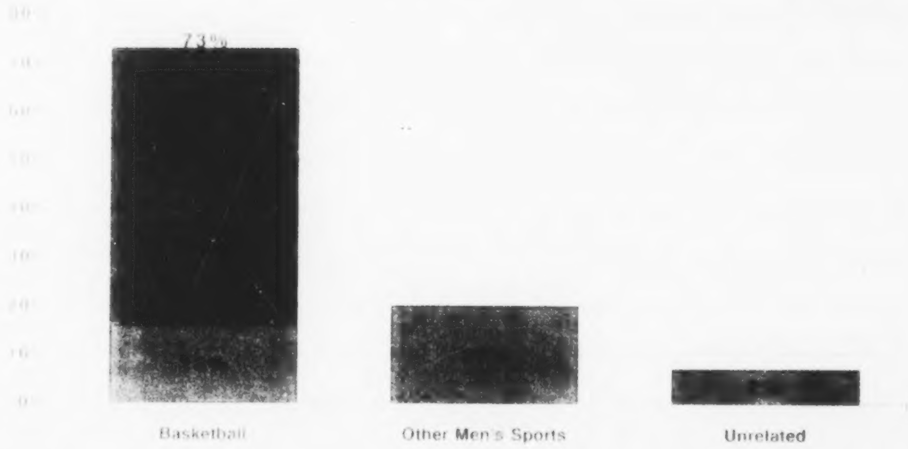
1993 Average NCAA Division 1-A Men's Programs Expenses



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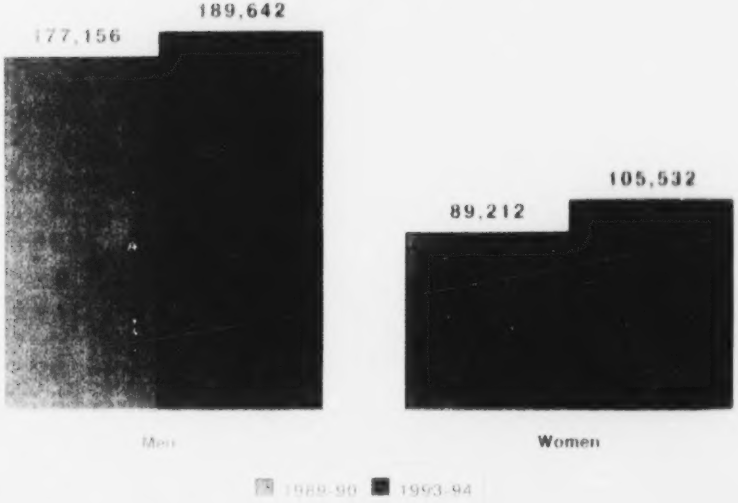
Participation Growth for Men's & Women's NCAA Sports



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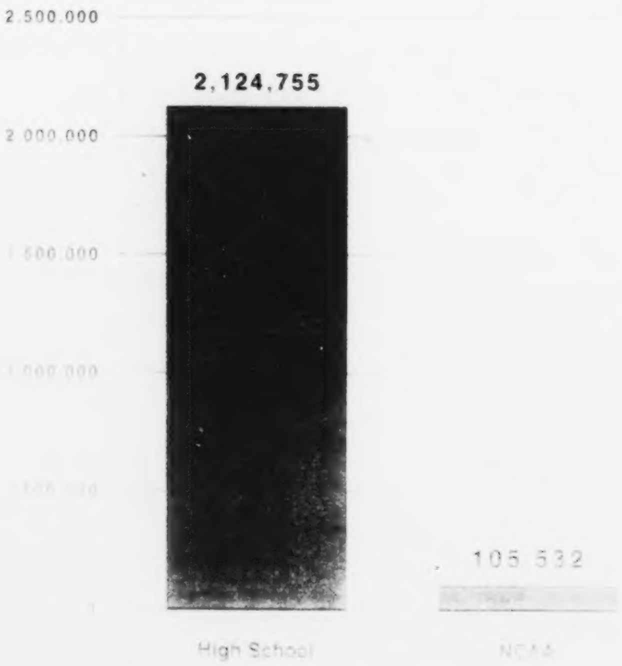
NCAA and High School Female Participation Levels



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Chairman MCKEON. Mr. Kerr.

STATEMENT OF T.J. KERR, WRESTLING COACH, CALIFORNIA STATE UNIVERSITY, BAKERSFIELD, CALIFORNIA

Mr. KERR. Thank you, Mr. Chairman.

Members of the subcommittee, besides being the wrestling coach at California State University at Bakersfield, I am also President of the National Wrestling Coaches Association. I will try to get right to the point.

We started in the fall to put together a coalition that would prevent elimination or reduction of male sports and also increase women's sports. That is what our stance has been and that is where it has always been. In fact, OCR regulations discriminate against women in contact sports. It took 13 months of fighting in order to allow women on my team. In fact, our national champion is from Montana. She is 18 years old. She placed in the world championships.

But rather than talking about women's opportunities in wrestling, is there a crisis for men's sports? Yes. They are being dropped. Male gymnastics is almost extinct. We have lost over 200 programs since 1972. This year we are going to lose between 15 and 20 wrestling programs, maybe more. In the last seven days, eight male sports have been dropped in the State of Pennsylvania and two women's sports have been added.

Right in front of me is the February 15 NCAA News. Now, we were just cited that male participation has increased the last four years.

I was a math major for a little while, but I am a dumb wrestling coach. If you look at statistics, in 1984, there was over 200,000 male participants. We hit an all-time low in 1989 and we are back to 1993 which I will give you the statistics. We had a tremendous decline. The reason that we have increased the last four years is because the NCAA has had 97 colleges and universities enter from the NEI and the National Christians and National College Association. The NCAA has actually grown by 12,000 athletes over the last four years, but men's sports has continued to decline if you look at that statistic.

Be very careful how you view standards and I hope that you will ask me some questions about that. Let's get to the crisis. Let's not fool around anymore. Let's talk about the proportionality rule. In 1993–1994, there was a record number of women, 105,532, while men's programs were 189,642. As I say, down from 10 years ago of over 200,000.

Currently our national enrollment is 53 percent female. We were supposed to go to 55 female and some people think even farther. If we applied the proportionality rule right this minute, with these statistics, we are talking about eliminating 100,000 males. One hundred thousand males. And we are going to eliminate them by dropping their program or capping their programs.

We want to increase women's participation. I didn't like the 13 months of grief that my president and athletic director gave me on trying something new. We are not supposed to discriminate against any gender, yet I feel with this gender quota we are discriminating. We do need to raise participation.

We do not use proportionality in any other department. We don't use it in the Nursing Department because it would destroy the Nursing Department. We don't use it in engineering. We don't use it in a couple of different places.

The other thing that concerns me is that athletes for intercollegiate athletics do not come from the student body. Intermurals recruits from the student body, but not athletics. Athletics comes from the high schools. We all recruit from the high schools. I see the yellow light is on.

Let me use an analogy and please bear with me. My passion—my recreational passion—is backpacking. I have taken my son and daughter backpacking throughout the years. Now that they are in high school, my daughter doesn't wish to backpack anymore but my son does. I have introduced five women to backpacking over the last 12 years. My current hiking partner, to use a wrestling expression, is a "stud." She can navigate where there are no trails. She can carry more weight than her share. She can bust up an 11,500 foot pass, and she can walk into a blizzard camp in the snow and sleep on five feet of it. There is only one problem: Only 20 percent of the backpackers are female. Is the Forest Service or the National Park system going to prohibit 75 percent of the male backpackers from a wilderness permit? I don't think that is right. That gets at interest; it gets at proportionality.

The last thing I would like to say is I have a world-class athlete behind me. Coach Osborne is one of the best all-time collegiate coaches. He is by far the greatest wrestling coach of all time. It is disturbing to me that when he is introduced, only a section of the crowd claps for him. I admire all the women athletes. I have two world-class athletes on my team. But that is where we want to go.

Thank you very much.

Chairman McKEON. Thank you.

[The prepared statement of Mr. Kerr follows:]

TESTIMONY OF
T.J. KERR

on behalf of

THE NATIONAL WRESTLING COACHES ASSOCIATION

presented to

THE POSTSECONDARY EDUCATION SUBCOMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

MAY 9, 1995

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The Coalition's Position Regarding the Office for Civil Rights' Interpretation and Enforcement of Title IX

SUMMARY

1 We support Title IX and the Congressional intent to prohibit discrimination based on gender.

2 We oppose and object to the OCR's interpretation and manner of enforcing Title IX, particularly that portion which stresses the proportionality rule. The proportionality rule is a gender quota which ties athletic participation ratios to enrollment ratios

3 As a direct consequence of OCR interpretation and enforcement policies, school administrators feel compelled to drop male sports programs rather than add female sports programs.

4 For example, the number of male gymnastics programs has now slipped to fewer than 40, the minimum number required to hold an NCAA tournament. When a sport loses its NCAA tournament extinction at the college level is inevitable. The imminent extinction of male gymnastics has to be the result of the gender quota in that female gymnastics at the college level is thriving.

5 All male sports programs are vulnerable in that approximately half of the nearly 200,000 of the male college athletes must be eliminated to reach the gender quota.

6 The OCR maintains that it places no more emphasis on the proportionality rule (prong 1) than the other two prongs. The other prongs, as interpreted and enforced by the OCR, however, are but facades to avoid the prohibition against quotas announced in the *Bakke* decision.

7 The unfair and discriminatory OCR rules are creating anger and resentment among males and those rules will soon have an extraordinarily deleterious effect on our Olympic efforts and the character of our high school, junior high and grade school boys.

INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am T.J. Kerr, wrestling coach at California State University at Bakersfield and President of the National Wrestling Coaches Association (NWCA). I am honored and privileged that you selected me to address you today about a crisis within our athletic community.

The NWCA is the voice of all wrestling coaches in the country. I shall also attempt to speak on behalf of all the young male athletes in this nation and their parents. We are particularly concerned about the tens of thousands of young men whose athletic careers have already been cut short by the OCR rules.

While we firmly agree with the letter and spirit of Title IX, we are firmly committed to the proposition that it is unconscionable to eliminate male programs or male athletes to satisfy a gender quota. Both the OCR and the courts have expressed the opinion that a school is justified in dropping male athletes in order to comply with Title IX. We believe that this opinion misconstrues Congressional intent.

We are today therefore petitioning Congress seeking relief from the draconian but unintended consequences of Title IX as interpreted and enforced by the OCR and the courts.

IS THERE A CRISIS?

As a threshold issue, you might ask -- is there a crisis? Yes there is. Male gymnastics is almost extinct at the college level. Wrestling has relatively recently lost over 100 programs and may lose as many as 20 programs this year.

Programs in every sport have been dropped or reduced in number -- soccer, baseball, tennis, swimming, etc. -- even football and basketball.

WHY IS THERE A CRISIS?

All male sports programs are at risk because of the proportionality rule/ gender quota which the OCR has drafted. There are about 190,000 male college athletes in Divisions I, II, and III. There are about 105,000 female athletes. How can proportionality be achieved when the present male to female ratio is 47-53? If the trend continues, administrators will have to eliminate about 100,000 male athletes to reach proportionality.

In 1972 when Congress enacted Title IX the college enrollment ratio nationally was 55%+ male. By the 21st Century 55% of the college population may well be female. The 55-45 female-to-male ratio sets up a gender quota which is impossible to achieve in no small part because females do not tend to compete in sports -- particularly those like football and wrestling. Nor do they participate in a non-scholarship/ walk-on capacity in any where near the number which males do. California Bakersfield, for example, we are 62% female by enrollment. Statistically, it is almost impossible with that enrollment ratio to have a viabably diverse athletics program for male students.

HOW DOES PROPORTIONALITY CAUSE ELIMINATION?

Elimination of male athletes occurs in two ways -- administrators eliminate programs and/or they eliminate non-scholarship / walk-ons athletes from those programs. Both are anathema. We have one goal - We seek to end the elimination or reduction of male sports programs to achieve a quota.

School administrators believe that they must achieve proportionality. Many are unable, because of budget constraints, to add female sports programs, so these administrators drop male programs or "cap" sports by dropping the non-scholarship or walk-on athlete.

Both of these approaches to achieving "gender equity" are wrong. Programs should not be eliminated because athletes matriculate at a school in the good faith belief that the administration will honor its commitment to provide a program for their four years of college. It is a devastating betrayal for these young men when they learn that their faith has been misplaced. It is worse when they are informed that the reason for the elimination of their program is Title IX or gender equity.

The capping of male sports is equally discriminatory and destructive. in this circumstance a young man pays tuition, walks on to a team, works as hard as the first-teamer, but simply does not have the skills to compete at the highest levels. These athletes normally are the best students and the best contributors to their alma maters when they graduate. More importantly, they are comparatively free to the school. The school dumps them because they are the most expendable.

WHY IS THE PROPORTIONALITY RULE THE ONLY (REAL) RULE?

The OCR's Director, Norma Cantu, has claimed on many occasions that administrators need not eliminate male programs to satisfy Title IX. She says that administrators can satisfy any of the prongs to comply with Title IX. All administrators--even her supporters--disagree (see below).

Initially, almost everyone "knows" that prongs 2 and 3 simply avoid the sanctions of the *Bakke* decision which prohibits gender quotas. As interpreted and applied by the OCR the prongs are nothing but a facade. Prong 2 dictates that administrators gravitate toward the gender quota, a standard that most can not meet by adding women's sports programs.

Prong 3 is the interest and abilities prong. By any measure of interest thus far tested, males show a far greater interest in sports participation than females at all levels. The OCR, however, ignores these measures. Probably no school has ever met this test to OCR's satisfaction.

Ironically, even Norma Cantu's supporters unwittingly contradict her about the primacy of the proportionality rule. In a letter to Senator Breaux dated January 25, 1995 the 600+ members of the National Association of Collegiate Women Athletic Administrators (NACWAA) wrote:

> "HOW CAN IT BE? that certain members of the United States Senate who profess to support gender equity could suggest that Secretary Riley reject the proportionality test as a primary measure of compliance with Title IX, when judges in more than ten major Title IX court cases to date have determined that proportionality is the single most important prong of the three pronged test of compliance."

At the very least, NACWAA's letter contradicts Ms. Cantu's position and corroborates our position -- the proportionality rule is dispositive of compliance with Title IX, and that is what all administrators think too.

WHAT IS THE IMPACT OF THE GENDER QUOTA ON OUR NEXT GENERATION OF MALE ATHLETES?

I have sought in my program to work with the many young men who otherwise would not be able to attend college, and I know I speak for the coaches of all male programs when I say that the elimination of male opportunities will greatly affect the future generation of young men.

All statistics reflect that the opportunities existing for females is much greater than for males. For example, wrestling is the sixth most popular high school sport in the nation. There is, however, only one college program for every 33 high school wrestling programs (33-1). Of the top ten female sports, the worst ratio is about 22-1 and the best ratio is about 11-1. High school females have greater opportunities to compete at the collegiate level in every counterpart sport except golf and gymnastics.

As these disparities continue to grow as male programs are eliminated, high school and junior high school male programs will atrophy and die. Many kids, without the option of participating in athletics, will choose antisocial activities.

Unfortunately, at present, there is hardly a male high school athlete who is unaware of Title IX and the OCR's approach to gender equity. Expectedly, these males are angry and their morale is sinking.

WHAT IS THE IMPACT OF THE GENDER QUOTA ON OUR OLYMPIC TEAMS?

The vast majority of our Olympic athletes have trained in the university. If, for instance, gymnastics is allowed to die at the college level, the quality of our Olympic team will be greatly reduced. Does Congress want this to be another unintended consequence of Title IX interpretation and enforcement?

WHAT OTHER PROBLEMS HAS THE OCR'S GENDER QUOTA CREATED?

Ironically, as a direct consequence of the OCR's and NOW's pressure, the California State University system signed a consent decree requiring proportionality by 1998. At Cal State Bakersfield, male Olympic sports are all but doomed. Recently San Francisco State dropped its football team. NOW has signed a similar contract with the Chicago school system and Florida has created a statute revolving around the proportionality rule.

Another irony is that while my wrestling program creates a great deal of its own revenue, we are required to give 50% of what we earn to the female programs. Obviously, donors want to give their money to a particular program and when they learn that half of their money is going to another program (whether male or female), they refuse to donate anything. Furthermore, our athletes have come to resent the fact that we have to work both for our own program and help to fund the programs which do not work to fund themselves.

WHAT IS OCR'S DEFINITION OF "PARTICIPANT" -- AND WHY IS THAT DEFINITION DESTROYING MALE SPORTS OPPORTUNITIES?

A very important issue in the analysis of OCR's gender quota is how the term "participant" is to be defined. Presently the OCR defines participant as either a scholarship or non-scholarship athlete.

Since male sports programs encourage walk-ons to try out for the teams, there are probably more non-scholarship male athletes than scholarship athletes.

On the other hand, there are far fewer females who participate in a non-scholarship capacity. At the Division III level, for example -- where all athletes are non-scholarship -- male athletes outnumber female athletes by 25,000 participants.

The irony is that in the OCR's "final solution" it is permissible to achieve "gender equity" by simply eliminating these male non-scholarship athletes. It is true that by eliminating all male walk-ons we could achieve proportionality. But we could also achieve proportionality by requiring females to fill their "unused participatory opportunities." Which is the better solution? To eliminate or create participatory slots?

The obvious reason why non-scholarship female athletic slots are not presently created is that coaches of female programs know that they do not have to encourage walk-ons or even permit them to try out in that their schools must provide additional slots. The females therefore have the leverage to require the schools to create only scholarship participatory slots.

Again, administrators, in order to retain discretionary control over their schools simply eliminate male athletes by capping sports.

WHAT CAN BE DONE TO SOLVE THE PROBLEM?

First, things have changed since 1972 when Title IX was enacted. Female athletic participation has skyrocketed from about 10% to about 40% of the total collegiate athletic community. These enormous changes occurred in the face of the fact that football, a non-counterpart sport, absorbs over 1/4 of all of the male participation slots.

"Gender equity" is a reality in almost every school in the country. As proof, one need only reflect on the fact that females now have nearly the same number of college athletic programs as males (6520 - 7211 respectively) and receive more scholarship aid in almost every counterpart sport.

Gender equity, however, should not be synonymous with gender quotas. The OCR's gender quota, which masquerades as the proportionality rule, is now an anachronism which should be abolished.

In its place, reason should prevail. Schools offering the same number of athletic programs to males and females should be deemed to be in compliance with Title IX. Since there are nearly the same number of athletic programs presently for males and females, schools should be encouraged to build up the present programs rather than creating new ones.

Also, in that males participate in a non-scholarship/ walk-on capacity in much greater numbers than females, it is time to require females to fill these "unused participatory opportunities" which if developed, would solve this problem alone.

CONCLUSION

In conclusion, Mr. Chairman, thank you for holding this hearing to consider our petition. I know that when you created Title IX you did not intend the elimination of male sports as we know them -- that, however, will be the unintended consequence if Congress does not intervene. We need your help to change the rules so that we can exist and make gender equity work for both males and females.

Finally, thank you for the opportunity to appear here today. I will be happy to answer to the best of my ability any questions you may have of me.

THE OCR IS DESTROYING MALE SPORTS OPPORTUNITIES

THE PROBLEM

Title IX, enacted in 1972, prohibits gender discrimination in educational settings.

In 1979 the Education Department's Office for Civil Rights (OCR) created a three-part test to measure compliance with Title IX. The Director of the OCR, Norma Cantu, has on several occasions, stated that a school can comply with any of the prongs to be in compliance with Title IX. The problem is that, as interpreted and enforced by the OCR, prongs 2 and 3 are merely facades to avoid the prohibition against gender quotas which the Supreme Court announced in the *Bakke* decision. The prongs are:

1. Are the participation opportunities for women and men substantially proportionate to their respective rates of enrollment?

   Presently, female enrollment nationally is 53%. Female athletic participation nationally is about 37% (105,000). To create proportionality educational administrators must raise female participation to 53% (200,000), lower male participation to 47% (from the current 190,00 to 100,000) or create some combination therof.

   Impact on Male Sports

   This "proportionality rule" is a quota that can not be met without destroying male sports programs primarily because females do not tend to:

   compete in certain sports - like football and ....wrestling - which have historically attracted large numbers of student- athletes

   compete at the college level in a non-scholarship or "walk-on" capacity

> **The facts that football teams are large and that females do not tend to compete in a non-scholarship capacity in any where near the numbers of males tend to skew the participation ratios greatly towards men and make compliance with the proportionality rule nearly impossible.**

2. Has there been a continuing practice of program expansion for the under-represented sex?

   Since almost no school with a football team can satisfy the gender quota required by the OCR under part 1 all schools must satisfy part 2. The OCR and the courts require that schools show the addition of "recent" new female programs. Also, since it is nearly impossible to add enough female programs to reach proportionality (primarily because of the football numbers and the females tendency to not walk-on), this approach puts educational administrators on the OCR treadmill virtually forever.

   Impact on Male Sports

   > Educational administrators -- realizing that the gender quota can never be reached (under part#1) by adding female athletic teams -- have decided to just drop their male teams and/or athletes. Dropping male athletes has the additional benefits of avoiding endless regulation by the OCR which occurs when a school takes the program expansion approach. (Also, elimination of programs puts extra money in to the administrative budgets.)

3. **Has the school fully and effectively accommodated the interests and abilities of the under-represented sex?**

When schools are out of proportion they normally can not meet this prong no matter how many surveys they do or how powerfully they show that the disparity is not based on discrimination. Probably no school has ever passed this test to the satisfaction of the OCR.

Conversely, if a female team steps forward and demands NCAA status, the school realistically must instate the team. The reason is that the since the school is out of proportion the administrators must get in proportion. The females are obviously interested and there is no way to test ability.

Impact on Male Sports

This standard is the most unfair and the most likely to result in administrators' eliminating male sports. This standard never benefits males or administrators.

For example, now that bowling is an NCAA sport, a group of female bowlers can demand that their college administrators instate them as a team and give them all of the resources of any other NCAA athletic team. Administrators are vulnerable and must acquiesce regardless of the bowling averages of the female students because there is no standard to test abilities.

Other classic examples are the sports of female crew and lacrosse which usually have no high school base in the states where the universities instate the teams.

In order to avoid even the possibility that a few female student-athletes can dictate university policy, most administrators will inevitably decide to simply drop male sports programs.

THE ELIMINATION OF MALE ATHLETIC OPPORTUNITIES

Males are being deprived of an opportunity to participate in college sports and being discriminated against because of the gender quota set by the Office for Civil Rights in two separate and distinct ways:

(1) male athletic programs are being eliminated; and

(2) "walk-ons"/ non scholarship athletes are being eliminated.

The Elimination of Male Athletic Programs

Numerous male sports programs have been dropped recently as a result of the gender quota created by the Office for Civil Rights.

The most dramatic example of this phenomenon is male gymnastics. Within the last few years male college gymnastics programs have been reduced to fewer than 40 teams, the least number required to maintain an NCAA tournament. Meanwhile, female gymnastics at the college level flourishes. Almost all of male Olympic gymnasts are selected from the college ranks so this attrition will inevitably affect our Olympic efforts.

All of the other male sports programs are also inexorably being drawn toward this black hole of extinction created by the OCR. Wrestling, for instance, has lost about 140 programs.

Nationally, there are about 190,000 male college athletes and about 105,000 female athletes. Since female students outnumber male students nationally (53%-47%), OCR's gender quota requires that there be more female athletes than male athletes. So educational administrators must either add 100,000 female athletes, eliminate 100,000 male athletes or some combination thereof. If administrators continue to choose "elimination" -- even in combination with adding female sports programs -- all male Olympic athletic programs will be destroyed before the gender quota can be satisfied.

The Elimination of Male "Walk-ons" -- Capping Sports Programs

A more insidious approach to eliminating sports opportunities for males is to "cap" sports programs. This term means that walk-ons / non-scholarship athletes are dumped for the sole purpose of moving toward a gender quota. Non-scholarship/walk-on athletes cost the university virtually nothing, generally maintain the highest grade point average among athletes and are the most generous contributors upon graduation.

The real problem here is the manner in which OCR defines and counts "participants." All athletes, whether scholarship or not, are "bean-counted" the same. The real effect is that coaches of female programs coaches know that universities must increase female participation. These coaches must be given the option and must decide whether to increase their teams with scholarship or non-scholarship athletes. The obvious result is that female programs usually refuse to encourage, and in many cases will not take on, walk-ons. Schools are then required to fill all female teams with scholarship athletes -- or eliminate male non-scholarship athletes.

Presently there are tens of thousands more male than female non-scholarship/walk-on athletes. Since females now have almost as many teams as males do nationally (6520 female programs to 7211 male programs), they should be required to fill their "unused participatory slots" before seeking more scholarship slots

CONCLUSION -- SOLUTION

Some where along the way the OCR's interpretation and enforcement of Title IX has lost a basic sense of reality and common sense. The purpose of Title IX is to fight discrimination. How does the elimination of male sports programs and athletes help to end discrimination?

Young male athletes arrive on campus every fall in the good-faith belief that they have an agreement with the university that they will be able to compete in their sports and their parents hope they will mature into men. The trauma visited upon these athletes when they are informed that they (or their sports programs) have been dropped is impossible to explain. The administrators' rationale that it is the government's gender quota which has destroyed their opportunity to participate creates extraordinary disillusionment, anger and frustration. Is it any wonder why our kids and our citizenry distrust and dislike our government bureaucracies?

We are petitioning Congress because Congress created a well-intentioned statute which worked reasonably well in the 80's to help increase female athletic opportunities. However, the unintended consequences of the 90's is that the OCR's rules, regulations and enforcement policies will destroy male athletics, do little to help females and will inevitably create extraordinary polarization primarily between the genders.

The problem, in greatest part, has been precipitated by the fact that the OCR, headed by Norma Cantu, has been, is, and will always be apparently unconcerned by the fate of male athletics.

It is therefore crucial that Congress clarify its intent regarding discrimination -- that is:

> Title IX was created to prohibit discrimination against females -- not to destroy opportunities for males.

> Specifically, we ask that Congress consider the following proposals:

PROPOSALS

1. Abolish OCR's gender quota. There is no logical reason for the continuing existence of the proportionality rule. Most importantly, there is no relationship between enrollment gender ratios and athletic participation ratios. Initially, the quota had the beneficent effect of quickly raising female participation rates to nearly 40%. It has now reached a point of greatly diminishing returns.

   "Gender equity" is now an integral part of almost every school in the country. The necessity to perpetuate a quota which is creating reverse discrimination, extraordinary discord and resentment has long since passed.

   Until OCR's gender quota is abolished -

   a. Colleges should be deemed in compliance with Title IX by offering the same number of programs to females as males. Again, schools now nationally offer nearly as many athletic programs nationally to females (6520) as males (7211).

   b. Football (and other) teams which do create the revenue for the other sports to exist should be exempted. It is unfair to the other male sports programs to count football as part of the gender quota but not count the fact that if football is financially successful it is going to use more participatory slots and spend more money.

   c. "Participants" should be defined as scholarship athletes only. Alternatively, females should be required to fill their "unused participatory slots" before creating new teams.

2. The proportionality test should be one of many criteria to assess whether new female athletic programs should be established.

FACTS AND FALLACIES

The only Title IX issue is discrimination. All facts and statistics should be measured against the yardstick of discrimination.

Many of the facts and statistics proffered by the other side are irrelevant to the question of discrimination and/or are misleading and/or are half truths with some important facts left out. Some are simply untrue. The following are the primary ones which females have sent to Congressmen and which are presently making the rounds:

ISSUE 1: Are males losing athletic participatory opportunities?

Misleading Fact: "According to the NCAA, the number of participants in women's sports increased between 1989 and 1993 by 10,000 **BUT THE NUMBER OF PARTICIPANTS IN MEN'S SPORTS ALSO INCREASED BY 10,000 GIVING THEM 65% OF ALL OPPORTUNITIES."** (capitalization and bold print provided by the author[s])

Explanation: These "increased" opportunities for males were not "new" opportunities but merely already existing athletes. 12,156 NAIA participants transferred to the NCAA between 1989 and 1993.

Gymnastics is almost extinct at the college level for males. But female gymnastics is flourishing. College wrestling has lost about 140 wrestling programs. These facts reflect that not only are males losing opportunities but that the reason for our imminent extinction is the OCR's gender quota.

Just as important, teams all over the country are capping sports programs and dropping walk-ons and non-scholarship athletes.

ISSUE 2: Do football teams support the athletic department?

Misleading Fact: "According to 1993 financial data, 62% of Division I-A and IAA football programs on average have *annual* deficits of $1 million in Division I-A and $664,000 in Division I-AA (61% of all Division I men's programs also show deficits.)"

Explanation: These statistics fail to point out several important facts:

(1) Almost all sports teams have annual deficits and probably always will.

(2) It is ironic that if a female crew team consists of more than 100 members (like at Washington State) -- everyone cheers. When football teams consist of in excess of 100+ athletes it's time to "trim the fat." Also ironically, although female athletic teams are much smaller they are much more expensive per athlete. Many female basketball teams which consist of only 15 players, for example spend $500,000+ per year.

(3) The "deficit" figure does not account for the enormous amounts of money contributed by alums, and is therefore not counted against the deficit. Also, the male budget absorbs many of the mutual expenses, such as facilities, personnel, etc.

(4) Besides the fact the that the 62% figure is misleading, it begs the issue in 38% of the cases. At those schools where football pays for itself, should it be exempted? Otherwise the participatory slots football"takes" hurt us, and the money it makes to justify the slots doesn't help us.

ISSUE 3: Are all of the numbers skewed in favor of males? Are the statistics misleading?

Misleading Fact:

Division I-A Results - 1992	*Female*	*Male*
Participation Rates	29%	71%
Athletic Scholarships	28%	72%
Operating Budget	20%	80%
Recruiting Budget	16%	84%

Explanation: Again, these statistics omit a number of important points and are therefore misleading:

(1) Note that these figures are drawn from 1992. Present statistics are much closer. For instance, there are now 7211 male sports teams and 6520 female sports teams and participation rates for females exceed 35%. The remaining difference can be accounted for by the non-discriminatory fact that males "walk-on" in far greater numbers.

(2) Scholarships have likewise increased significantly. In almost every counterpart sport females receive more scholarship money per aided athlete than males.

(3) The males' budget includes many of the expenses which should be charged to the women. For example, the expenses revolving around the cost of the facilities, support personnel, sports medical personnel, tutoring etc. is charged to the male budget.
It is therefore unfair for females to allege that 80% of the budget is spent on males and 20% on females. If females paid their fair share for facilities, personnel, etc., budgets would be relatively evenly distributed. Certainly, any difference in budgeting could not be attributed to discrimination.

ISSUE 4: Are colleges meeting the interests and abilities of their females athletes? How should interest be tested?

Misleading Fact: Colleges are not currently meeting the needs and interests of women in intercollegiate athletics in that:

"a) Most universities have women's club sports that would love to be elevated to intercollegiate status;

b) At the high school level, over 2 million girls participate in interscholastic sports; in the 1992-93 year, there were only 99,900 participation opportunities for women in the NCAA."

Explanation: There are also men who participate in club sports at the university level who would "love to be elevated to intercollegiate status." First, men participate in club (2/1), intramural (3/1) and high school (2/1) sports at a greater than margin over females. Why should females be elevated to simply satisfy a quota?

Second, if there are so many females who want to compete at the college levels, why do they not walk-on to teams in any where near the numbers that males do?

ISSUE 5: Does the OCR place more emphasis on the proportionality rule (the gender quota) than the other two prongs of the test? Does the university community believe that the proportionality rule is the main criteria for determining discrimination?

Misleading Fact: Norma Cantu, the director of the OCR recently wrote a letter to Senator Breaux addressing the Senator's concerns with respect to the proportionality rule. She said, "First let me underscore that the proportionality test is not and is not projected to be the primary measure of compliance under Title IX." (1/10/95)

Explanation: Ms. Cantu is disingenuous at best when she tries to minimize the importance of the gender quota portion of the three-part test. Those who have been subjected to an OCR investigation knows better. Better proof of the impact this approach has had at the college level is that 600+ members of the National Association of Collegiate Women Athletic Administrators (NACWAA) also wrote Senator Breaux about the proportionality rule as the primary criteria for determining discrimination.

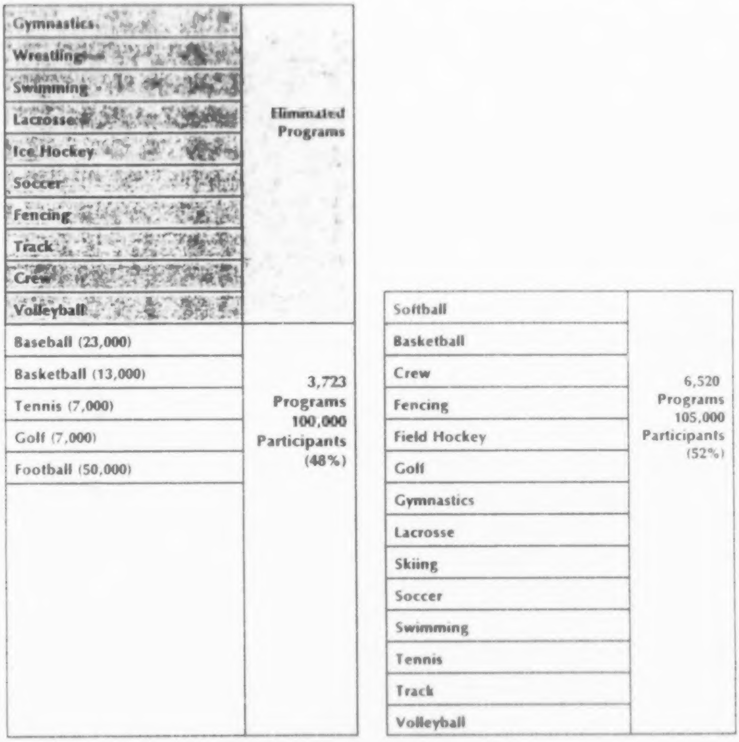
> "*HOW CAN IT BE?* that certain members of the United States Senate who profess to support gender equity could suggest that Secretary Riley reject the proportionality test as a primary measure of compliance with Title IX, when the judges in more than ten major Title IX court cases to date have determined that proportionality is the single most important prong of the three pronged test of compliance." (1/25/95).*

[* This letter not only contradicts Cantu's, but also reflects the "(mis)understandings" of college administrators. It is these "(mis)understandings" of the administrators created by the OCR's "mis-communications" which is destroying male sports.]

Creating Proportionality by Eliminating Male Olympic Sports Programs

Male Programs
7,200 All Programs
190,000 All Male Participants

Female Programs
6,520 All Programs
105,000 All Female Participants



Source: 2/15/95 NCAA News Participation Study (College enrollment ratio is approximately 53:47 female:male.)

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The following information has been compiled by the National Wrestling Coaches Association. This list depicts the 213 confirmed collegiate wrestling programs terminated since 1972, ironically the year Title IX was enacted.

Sources:

A. 1973 NCAA Official Collegiate Wrestling Guide. Published annually by the National Collegiate Athletic Association.

B. 1994-95 listing of Intercollegiate programs sponsoring wrestling. Published by the National Collegiate Athletic Association.

C. 1994-95 National Directory of the National Association of Collegiate Directors of Athletics. Official publication of the National Association of Collegiate Directors of Athletics.

ALABAMA

1. Auburn University
2. Livingston University
3. University of Alabama

ARIZONA

1. Northern Arizona
2. University of Arizona

CALIFORNIA

1. Cal. Poly Pomona
2. Chico State University
3. Claremont Mudd Colleges
4. Humboldt State University
5. Riverside - Univ. of California
6. San Diego St. University
7. San Jose State University
8. Stanislaus - Cal. State Univ.
9. Sonoma State University
10. U.C.L.A.
11. University of California at Santa Barbara
12. University of California
13. University of Redlands
14. Whittier College

BEST COPY AVAILABLE

COLORADO

1. Colorado State University
2. University of Colorado

CONNECTICUT

1. Hartford University
2. University of Connecticut
3. Yale University

DELAWARE

1. University of Delaware

FLORIDA

1. Central Florida
2. Jacksonville University
3. University of Florida

GEORGIA

1. Georgia Tech
2. University of Georgia

HAWAII

1. University of Hawaii

IDAHO

1. Idaho State University
2. Idaho University

ILLINOIS

1. Depaul University
2. Elmhurst College
3. Illinois Institute of Tech.
4. Lake Forest College
5. University of S. Illinois at Carbondale
6. Western Illinois University

INDIANA

1. Anderson University
2. Ball State University
3. Earlham College
4. Hanover College
5. Indiana State University
6. St. Joseph College
7. Taylor University
8. University of Evansville
9. University of Notre Dame
10. Valparaiso University

IOWA

1. Drake University
2. Grinnell College
3. Lewis & Clark St. College
4.
5. Morningside College

KANSAS

1. Emporia State University
2. Kansas State University

KENTUCKY

1. Eastern Kentucky University
2. University of Kentucky

LOUISIANA

1. L.S.U.

MAINE

1. Bowdoin College
2. Maine Maritime Academy
3. University of Maine

MARYLAND

1. Baltimore
2. Loyola
3. Towson State University
4. Washington College

MASSACHUSETTS

1. Amherst College
2. Brandeis University
3. College of Holy Cross
4. Tufts University
5. University of Massachusetts
6. Wheaton College

MICHIGAN

1. Adrian College
2. Albion College
3. Alma College
4. Calvin College
5. Hope College
6. Kalamazoo College
7. Michigan Tech.
8. Northern Michigan University
9. Saginaw Valley State
10. Western Michigan University
11. Wayne State University

MINNESOTA

1. Bemidji State University
2. Gustavus Adolphus College
3. Hamline University
4. Southwest State University
5. St. Mary's College
6. University of St. Thomas
7. Winona State University

MISSOURI

1. Lincoln University
2. Northwest Missouri State Univ.
3. Southeast Missouri State
4. Southwest Missouri State
5. University of Missouri-Rolla
6. Washington University
7. William Jewell College

MONTANA

1. Montana State University
2. Montana University

NEBRASKA

1. Doane College
2. Nebraska Wesleyan University

NEVADA

1. University of Nevada - Las Vegas

NEW HAMPSHIRE

1. Dartmouth College
2. University of New Hampshire

NEW JERSEY

1. Fairleigh Dickinson University - Madison
2. Fairleigh Dickinson Univ.-Teaneck
3. Glassboro State University
4. Mommouth College
5. Princeton University

NEW MEXICO

1. New Mexico Highlands

NEW YORK

1. Adelphi University
2. Albany State
3. Brooklyn Poly Technical
4. City College of New York
5. Clarkson University
6. Colgate University
7. C.W. Post
8. Elmira College
9. Fordham University
10. Geneseo State University
11. Hobart College
12. Long Island University
13. Manhattan College
14. Marist College
15. New York Maritime
16. Plattsburgh State University-N.Y.
17. Pottsdam - N.Y. State Univ.
18. Rensselaer Polytechnic Institute
19. Southhampton
20. St. John Fisher College
21. St. Lawrence University
22. University at Albany
23. University of Rochester
24. Wagner College

NORTH CAROLINA

1. Catawba College
2. Davidson College
3. East Carolina University
4. Elizabeth City State University
5. Elon College
6. Pfeiffer College
7. University of North Carolina-Charlotte
8. University of North Carolina-Wilmington

OHIO

1. Akron University
2. Bluffton College
3. Bowling Green University
4. Central State University
5. College of Wooster
6. Defiance College
7. Denison University
8. Hiram College
9. Kenyon College
10. Malone College
11. Marietta College
12. Oberlin College
13. Ohio Wesleyan University
14. Otterbein College
15. University of Toledo
16. University of Cincinnati
17. University of Dayton
18. Wittenburg University
19. Youngstown State University

OREGON

1. Linfield College
2. Willamette University

PENNSYLVANIA

1. Allegheny College
2. California University of PA
3. Dickinson College
4. Grove City College
5. Indiana University of PA
6. Juniata College
7. Lafayette College
8. Lincoln University
9. St. Francis College
10. Susquehanna University
11. Temple University
12. West Chester University of PA
13. Westminister College
14. Widener University

RHODE ISLAND

1. Rhode Island

SOUTH CAROLINA

1. Clemson University
2. Furman University
3. South Carolina State University

SOUTH DAKOTA

1. Black Hills State University
2. Huron University
3. South Dakota State University

TENNESSEE

1. Maryville College
2. University of Tennessee
3. University of Tennessee-Martin

TEXAS

1. Texas Tech University

UTAH

1. Southern Utah University
2. University of Utah
3. Utah State University
4. Weber State University

VIRGINIA

1. Hampton Sidney
2. Liberty University
3. University of Richmond
3. Virginia Commonwealth University
   William and Mary College

WASHINGTON

1. Eastern Washington University
2. Gonzaga University
3. University of Washington
4. University of Washington at Puget Sound
5. Washington State

WASHINGTON D.C.

1. Catholic University
2. George Washington University
3. Howard University
4. Seattle Pacific University
5. Whitman College

WEST VIRGINIA

1. Bethany College
2. Marshall University

WISCONSIN

1. Beloit College
2. Carthage College
3. Univ. of Wisconsin - Milwaukee
4. Univ. of Wisconsin - Superior

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UNSPORTSMANLIKE CONDUCT
SETTING QUOTAS FOR WOMEN IN COLLEGIATE SPORTS ISN'T FAIR PLAY

Defenders of affirmative action complain that the debate always focuses on race rather than on sex. While preferences that help blacks and other racial minorities are controversial, they insist, preferences that help white women are not-meaning that Americans really aren't offended by the idea of affirmative action. The supporters should hope Americans don't get a good look at the way that idea was recently translated into policy by a federal judge.

Brown University is not exactly redneck heaven. In fact, it has long been a model of progressive thinking. It abolished D's and F's in response to student demands in 1969 and has gained fame (or notoriety) for its relaxed academic requirements. Once all-male, it now has a student body that is 51 percent female.

After the 1972 passage of Title IX, which outlawed sex discrimination by colleges and universities getting federal aid, Brown leapt to show its good will. Between 1972 and 1978, it added women's teams in tennis, basketball, crew, field hockey, gymnastics, squash, swimming, volleyball, cross country, lacrosse, soccer, softball and outdoor track.

Today, the university funds 13 varsity sports for women and 12 for men. Brown women engage in varsity sports at nearly three times the average rate for American colleges.

But that, a U.S. district court said last month, is not enough to comply with Title IX. When a shortage of money forced the school to drop women's volleyball and gymnastics from varsity to club sports-as it also did with men's water polo and golf-it broke the law by failing to provide enough opportunities for women to compete.

The judge was not impressed by Brown's exceptional record. Nor was Arthur Bryant of Trial Lawyers for Public Justice, which filed the lawsuit. The university takes the view, he said afterward, that "if Brown is in violation, so is everybody. We agree with that." You heard right: Every institution of higher learning in America is guilty of sex discrimination.

What is Brown's chief crime? Simple: It fields athletic teams that do not precisely mirror the student body. Though women outnumber men on campus, they make up about 40 percent of the varsity athletes. The simplest way for the university to obey the law, advised Judge Raymond Pettine, is to arrange things so that women make up 51 percent of the participants.

That could be done not by adding teams for women but by dropping teams for men-which would do absolutely nothing for women. Adopt a quota and you're home free.

The possibility dismissed by the judge and Title IX militants is that the numbers reflect differing tastes. No one thinks that discrimination explains why fewer men than women participate in ballet or drama. But the assumption is that if fewer women than men play varsity sports, only unfairness can account for the gap.

In fact, for better or worse, young women are generally less interested in sports than young men. Despite the expansion of girls' athletics in recent decades, high school boys are 64 percent more likely to play organized sports than girls. Fitness activities and pickup games are also less popular among teenage females than males.

Of girls who apply to Brown, only about 43 percent express an interest in athletics. In the university's intramural sports, which take all comers, eight times as many males take part as females. Several women's varsity teams at Brown have vacant slots, while the men's are oversubscribed.

Plenty of young females are devoted to athletics, and the expansion of options for them over the past generation has been a thoroughly commendable change. But the chief goal should be assuring a chance for those who want to play-not enforcing quotas in participation rates.

If men are more inclined to these pursuits than women, there is nothing wrong with an imbalance in numbers-just as there is nothing wrong with a excess of women in the English department or a glut of men in engineering. What has taken place at Brown is plainly the result of women and men making different choices of their own free will.

The judge and the law take for granted that America's colleges are run by reactionary males who will address the needs of women only if they have a hammer hanging over their heads. In fact, there are powerful ideological pressures in academe to assure that females are treated at least as well as men-not to mention business pressures to avoid alienating a huge pool of applicants.

The court's decision is based on the fallacy that the surest proof of fair

treatment is statistical parity. This is the kind of thinking that has doomed racial preferences with the American people, who know that equal treatment doesn't necessarily produce equal results. Title IX has enjoyed public acceptance because it is seen as a way to assure opportunity. Once it becomes a machine for dictating outcomes, its days are numbered.
PHOTO: AP photo.

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FROM UNIVERSAL PRESS SYNDICATE
FOR IMMEDIATE RELEASE **DATED: 5/3/95**
COVERING THE COURTS by James J. Kilpatrick

WHEN LESS IS MORE

A few weeks ago the Supreme Court refused to hear Bill Kelley's case. In doing so, the high court passed up an opportunity to address a tough question of civil rights at the college level. Kelley was a member of the swimming team at the University of Illinois. For good or ill, his old team has now been equalized out.

There is a nice irony here. In its effort to increase athletic opportunities for women, Congress has succeeded in reducing athletic opportunities for men. The incongruity may never have been intended, but there it is: Less is more. We move toward equality by subtraction, not addition.

The facts are not much in dispute. The University of Illinois has sponsored men's swimming teams since 1911. Women's teams came along in 1982. Title IX of the Civil Rights Act prohibits discrimination on the basis of sex in any program of education receiving federal support. Specifically, the regulations ban "different treatment" in any "interscholastic, intercollegiate, club or intramural athletics." The goal is equal opportunity.

Everything went swimmingly, so to speak, until the spring of 1993. The U.S. Department of Education had been putting pressure on the university to eliminate or reduce an evident imbalance under Title IX. Women made up 44 percent of the student body at Urbana-Champaign, but they accounted for only 23 percent of the varsity athletes.

Things came to a head when enrollment for 1992-93 declined. The university faced a $600,000 deficit in its budget for athletics. Something had to give. The athletic director recommended that four teams be dropped -- men's swimming, men's fencing, and men's and women's diving. The women's swimming team was left untouched.

Kelley and seven other members of the men's team went into U.S. District Court, charging that the university had violated Title IX. Obviously the men's team had been treated differently. But was this the consequence of discrimination or a result of frugality?

Judge Joe Billy McDade did what he felt he had to do. In a leading case involving Brown University in 1993, the Court of Appeals for the 1st Circuit had ruled bluntly on the matter of achieving "gender parity." A university can bring itself into compliance not only by enlarging opportunities for women but also by contracting opportunities for men.

This was enough for Judge McDade. Financial constraints, he concluded, were the primary reason for killing the men's swimming team, but the university also wanted to stay on the sunny side of Title IX. He granted summary judgment in favor of the university, but he had a little more to say:

"The court is not unsympathetic to the plight of members of the men's swimming team and recognizes that Congress, in enacting Title IX, probably never anticipated that it would yield such draconian results.

"Plaintiffs' case has emotional appeal because it graphically demonstrates the inherent unfairness of decisions which classify and isolate one gender for burdens that the other gender is not required to bear. Certainly it must be acknowledged that the members of the men's swimming team are innocent victims of Title IX's benevolent attempt to remedy the effects of historical de-emphasis on athletic opportunities for women ...

"Women have paid and continue to pay for discriminatory actions and attitudes which have historically excluded them from the athletic opportunities given to men, as represented by current statistical disparities among athletes in universities and colleges across the country."

Kelley and his colleagues appealed McDade's decision to the 7th Circuit, but last September they lost again. The court found that the university's decision to retain women's swimming was "extremely prudent." Otherwise Illinois would have been vulnerable to suit by the women.

With the Supreme Court's order, refusing to hear Kelley's further appeal, this particular litigation has ended. Previous suits have been directed at Brown University, Colorado State, Colgate, and the Indiana University of Pennsylvania at Indiana, Pa. All have turned out the same way. Successive courts have deferred to bureaucratic regulations implementing Title IX, and that's that. Tough luck, fellows.

The lust for gender equality in collegiate athletics belies reality. It is not discrimination that holds down the number of women in varsity sports. It is the different nature of the species. Not all women want to be like men. And to that wholesome proposition I say, vive la difference!

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Wrestler's trust betrayed, dreams lost

To the editor:

I am a Drake University student athlete, who like most of us thought I had seen it all. Until March 11 my life has been filled with great moments these past three years at Drake. I've always been a "risk taker," and after the decision-making process to come to Drake I thought it was a great risk that I was taking. It was a risk greater than that of you waking up in the morning I'm sure, because I put all of my trust into this University as many of us did when we first arrived here as freshmen.

Over the past three years I felt all your basic emotions towards life, love, hate, happiness and sadness. But for some odd reason I have felt confusion and loneliness on a more regular basis. Still that was all right, because I thought I had found a home at Drake.

I am a Drake University student who is denied the chance to compete on a national scale because the athlete part of me was taken away.

Sure Drake has plenty of room for clubs and real nice facilities to also accommodate the desires of an athlete. My question is of the three coaches and 25 students who were raped of their "athlete" title and status.

President Ferrari and Lynn King, I'm glad to see that you were able to save this great institution money, even if you did have to "crack a few eggs for the omelet." I want to know one thing though, how can you expect support from us as individuals who represent this University when you can tell 28 students and coaches that they are non-existent anymore?

What I'm upset about most definitely towers over my nominal existence, however; Who are you to change my life? You still honor your scholarship promise, but to some of us money is not everything. You have crushed my dreams. Kinda silly, but truthful. And my question is why haven't you given us a chance to save our program?

You canceled the wrestling program, crushed the bond that 28 of us had made over the years, shattered our dreams, and all in two days!

William Blauvelt (AS2)

UNIVERSITY OF WISCONSIN-WHITEWATER
800 West Main Street, Whitewater, Wisconsin 53190-1790
Intercollegiate Athletics

May 5, 1995

Mr. Dale Anderson,

This is a difficult summary to write because I have tried to remove from my memory the negative experiences that I encountered while going through our gender equity study. The reason that this is hard is because the experiences and frustrations that I encountered were the most frustrating and stressful that I have ever encountered in my professional career.

Our university had conducted our own gender investigation and found it necessary to make adjustments in the program and redistribute resources to meet our established goals. This resulted in the shifting of funds from one area to another and adding an additional sport for women (soccer).

We were extremely surprised when two years later we were informed by the Chicago branch of the Office of Civil Rights that they would be conducting an investigation. When the two investigators conducted their inquiries on our campus, I was surprised as to the lack of understanding that they exhibited of an NCAA Division III athletic program. As a result of their investigation and unwillingness to accept our plan of action, it became necessary to formally cap men's athletic programs on our campus.

Even though we felt on our campus that we could meet the interest and ability of our under represented gender which is one of the aspects of Title IX, it appeared that the main goal as communicated to us by the OCR was to strive toward proportionality. To do this, it was necessary for us to cap men's programs and open the floors for women's sports. This exercise has caused morale problems and frustrations among both the coaches of male and female sports and student athletes as well.

In closing, I find it very difficult to even discuss this issue since as I have stated before, was the worst stress producing activity I have ever been involved in.

Respectfully yours,

Willie Myers
Athletic Director - Men

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Chairman McKEON. Ms. Hilliard.

STATEMENT OF WENDY HILLIARD, PRESIDENT, WOMEN'S SPORTS FOUNDATION, EAST MEADOW, NEW YORK

Ms. HILLIARD. Thank you. I am glad to have the opportunity to speak here.

My name is Wendy Hilliard. I am currently the President of the Women's Sports Foundation, and I am also an athlete. I am not a backpacker, but I competed in the sport of rhythmic gymnastics, an Olympic sport. I was the first African American to represent the United States in rhythmic gymnastics. I won international gold medals, competed in three world championships, and was twice national team captain.

I went to college in the 1980s when Title IX was supposedly in force. My sport wasn't offered at the varsity level. I did not receive an athletic scholarship. I had to work my way through college and pay for my athletic training, yet I graduated from New York University with honors.

Now, the month before graduation, I missed the 1988 Olympic trials by five one-hundredths of a point.

Now, unlike Dan Gable or the other athletes you have here, why wasn't I, one of the best in the entire country in my sport and also at the top of the class, an athlete, able to receive an athletic scholarship? There are still very many women who are asking that question today. Twenty-three years after the passage of Title IX, women are receiving $179 million less in athletic scholarships each year.

Now, you have heard and will hear allegations of gender quotas. If there is a quota, it is 65 percent male and 35 percent female. Yet football and men's minor sports are asking Congress to maintain that quota. They are saying that women have come far enough. Well, 35 percent is not far enough.

The bottom line is that institutions of higher education have ignored Federal law for 23 years. Proportionality is not the issue. It is a distraction from the real problem, which is that few institutions are giving female athletes their fair share. Brown said it should have met prong two: Expansion of opportunity.

Now, Brown was sued because it cut two varsity sports, gymnastics and volley ball. It reduced opportunity over the last five years. Now, I hope that Congress will not be swayed by the myth that football is revenue producing—only 20 percent of football programs make money—or the ridiculous contention that football is already eating up half of the athletic budget but somehow needs to be protected from Federal law guaranteeing that we treat our daughters as well as we treat our sons.

Now we must focus on what the stakes really are. Women who play sports are more confident, have higher levels of self-esteem, and stronger self-concepts. They are less likely to get involved with drugs or get pregnant, and they are more likely to graduate from high school and earn better grades.

As little as four hours of exercise a week reduces a woman's risk of breast cancer by 60 percent, an affliction that is going to affect one out of every eight women in our society.

One out of every two women over the age of 60 is suffering from osteoporosis, a $15 billion a year health problem. Now these are generations of women who were not permitted to play sports and were discouraged from participating in weight bearing exercises that are necessary to laying down bone mass.

Now, sports is where boys traditionally have learned about teamwork, goal setting, and the pursuit of excellence in performance, critical skills necessary for success in the workplace. In an economic environment where the quality of our children's lives will be dependent on two-income families, are we willing to have our daughters less prepared for the highly competitive workplace than our sons?

Now, there are those who say that men's nonrevenue sports have to be eliminated in order for schools to comply with Title IX. The law requires no such action. You can keep all the men's sports and increase opportunity for women if you cut the cost, not the participation of men's sports, and use the savings to fund program expansion for women.

In my written statement, I list at least 14 cost-cutting and revenue-producing measures that most schools have not considered. None of them would hurt participation opportunities for men or the success and revenue-producing ability of football. Athletic departments refuse to be fiscally responsible and make it difficult to make cuts that would save men's minor sports.

The proportionality test is not at fault. Fiscal responsibility is the problem. Protecting football, financial irresponsibility is the problem. There are those who would persuade the subcommittee to conclude that women aren't as interested in athletic opportunities as men. Why do I have to prove I am interested in sports? My brother doesn't have to prove that he is interested in sports.

Expenditure cuts can be made in football without hurting the game, reducing football revenues, or reducing participation opportunities for football players. For example, in football scholarships, if Division I were reduced from the current maximum 85 to 50 full scholarships, 50 full scholarships could be split among 85 players, therefore, maintaining current team size.

Needy students could be allowed to receive nonathletic financial aid based on need. There would be no reduction in the size or quality of teams while saving enough funds to add two or three more women's teams. At many institutions, this one action would permit Title IX compliance.

Chairman **McKEON**. Ms. Hilliard.

Ms. **HILLIARD**. I will close because I think, Chairman McKeon, you can relate with this with three daughters and three sons.

Now, a simple analogy. You are a parent who has a son and a daughter. For many years, you have given your son on the occasions of his birthday and holidays baseballs, gloves, footballs, hockey sticks, and other sports equipment. His room is full of sports implements, a veritable palace of athletic privilege.

One day your daughter comes complaining that her brother will not let her borrow his glove so that she can play catch with her girlfriends. Would you tell your daughter to go out and work to earn the money to buy her own glove, or would you explain to her how important it is to share? Would you change your commitment to the importance of sharing and treating your children equally if your son advanced the argument that his sister would destroy or lose or in some way or other way damage his glove or his football? That is the question.

Thank you.

Chairman McKEON. I guess I should have also said, I have three grandsons and seven granddaughters.

Ms. HILLIARD. Makes a good team.

[The prepared statement of Ms. Hilliard follows:]

STATEMENT OF WENDY HILLIARD
BEFORE THE SUBCOMMITTEE ON POST SECONDARY EDUCATION, TRAINING AND LIFE-LONG LEARNING

Committee on Economic and Educational Opportunities
U.S. House of Representatives
May 9, 1995

I am Wendy Hilliard, currently the President of the Women's Sports Foundation, a 501 (c) (3) non-profit educational organization. The Foundation was founded in 1974 by Billie Jean King, Donna de Varona, Wyomia Tyus and other champion female athletes to promote and enhance sports and fitness opportunities for girls and women. These successful women athletes did not want girls following in their footsteps to face the same barriers to participation as they did. To address the needs of girls and women in sports, the Foundation produces programming in four areas: education, advocacy, recognition and opportunity.

I am also an athlete. My sport is rhythmic gymnastics. An Olympic event since 1984, it combines hand apparatus such as a hoop, ball, or a flowing ribbon with gymnastics floor moves and music. I was the first African-American to represent this sport in international competition, which I did for almost ten years including three World Championships. I won international gold medals and was twice National Team Captain.

I went to college in the 1980s when Title IX was supposedly in force. My sport wasn't offered at the varsity level. I did not receive an athletic scholarship. I had to work my way through college, and pay for my athletic training, yet graduated from New York University with honors. The month before graduation, I missed the 1988 Olympic trials by .05 of a point. Why didn't I, as one of the best in the entire country in my sport, and at the top of my class as a student have the opportunity for an athletic scholarship? There are still many women who are asking that question today. Twenty-three years after the passage of Title IX, women are still receiving only 35% of all college athletic participation opportunities.

On many occasions I wonder, what if? But, the fact is, my lack of opportunity has given me more resolve to support equal opportunities for females in sport, which is why I am speaking before you today.

The Importance of Sports Participation

Before I address the technical questions which have been raised about Title IX, it is important to review why the benefits of an educational activity like intercollegiate athletics are as important for our daughters as they are for our sons.

- Women who are active in sports and recreational activities as girls feel greater confidence, self-esteem and pride in their physical and social selves than those who were sedentary as kids (Miller Lite Report, 1985).
- Research suggests that girls who participate in sports are less likely to get involved with drugs, less likely to get pregnant and more likely to graduate from high school than those who do not play sports (Women's Sports Foundation, 1989).

- Half of all girls who participate in some kind of sport experience higher than average levels of self-esteem and less depression (Colton & Gore, Risk, Resiliency, and Resistance: Current Research on Adolescent Girls, Ms. Foundation, 1991).

- One to three hours of exercise a week over a woman's reproductive lifetime (the teens to about age 40) can bring a 20-30 percent reduction in the risk of breast cancer, and four or more hours of exercise a week can reduce the risk almost 60 percent (Journal of the National Cancer Institute, 1994).

- One out of every two women over the age of 60 are suffering from osteoporosis (National Osteoporosis Foundation, 1992), a multi-billion dollar health problem. These are generations of women who were not permitted to play sports or discouraged from participating in weight-bearing exercises that are necessary to laying down bone mass.

- Sport is where boys have traditionally learned about teamwork, goal-setting and the pursuit of excellence in performance -- critical skills necessary for success in the workplace. In an economic environment where the quality of our children's lives will be dependent on two-income families, are we willing to have our daughters less prepared for the highly competitive workplace than our sons?

We cannot choose between our sons and our daughters with regard to access to and participation in such opportunities. This is what Title IX of the 1972 Education Amendments Act is all about.

Title IX Compliance in Colleges and Universities

Too few institutions of higher education, or high schools for that matter, are complying with Title IX of the 1972 Education Amendments Act. Here are some facts to prove the point:

- Females comprised over 53% of our college undergraduate student population in 1990 (U.S. Department of Education, 1990). Of 295,174 student-athletes participating at NCAA institutions in 1993-94, only 35.8% (105,532) were women (NCAA, 1994).

- Contrary to popular belief, men's sport participation has not suffered at the expense of providing participation opportunities for women. Men have consistently had double the participation opportunities provided to women and men's participation opportunities have increased since the enactment of Title IX, rather than decreased. Over the period 1982-83 through 1993-94, 9,407 new male participation opportunities were created. That means for every 2.2 new participation opportunities added for women, one participation opportunity was added for men (NCAA, 1994).

- The ***NCAA Gender Equity Study*** **released on March 11, 1992**, revealed the following significant discrepancies in athletic opportunities and financial support at the institutional level:

Average # Participants Per Program

Division	Males	Females
I	250 (69%)	112 (31%)
II	167 (68%)	79 (32%)
III	215 (67%)	116 (35%)

Financial Support

- Female collegiate athletes are receiving less than 24% of the athletics operating dollar and less than 18% of the athletics recruiting dollar (NCAA Gender Equity Study, 1992).

- Female athletes are receiving less than 33% of the college athletic scholarship dollar.

- Average scholarship expenditures:

Division	Average Annual Athletic Scholarship $ to Males	Average Annual Athletic Scholarship $ to Females
I	$849,130	$372,800
II	$319,543	$148,966

(**Male college athletes receive approximately $179 million dollars more per year** in athletic scholarship grants than their female counterparts.)

- In Division IA institutions, women's programs received only 14% of the total budget (Fulks, 1994).

- The NCAA has failed to provide strong leadership for its member institutions with regard to Title IX compliance. Only 9% of the faculty representatives at the NCAA Convention are women (Lovett and Lowry, 1989). Only 23.4% of all delegates to the 1992 NCAA Convention were women (NCAA, 1992). The NCAA has failed to act to legislate significant across-the-board caps on athletic program expenditures.

All of these facts are not surprising. Enforcement of Title IX and other civil rights legislation has been almost non-existent. In short, despite the requirements of the law, equal opportunity in sports for women is still a long way off.

This is not the time to take a step backward by reducing the strength of Title IX. If anything, the Office of Civil Rights should be asked to be more rigorous in its enforcement of the law. The burden of enforcement to date has fallen on the shoulders of parents whose daughters have not been treated fairly and who have had to go to court, at considerable expense, to protect the rights of their children.

Common Questions Raised About Title IX as it Affects College Athletic Programs

The Women's Sports Foundation's primary mission is education. We believe it is important for the general public and Congress to know the facts rather than be guided by popular mythology and misconceptions promoted by those who oppose Title IX. Thus, I would like to address issues often raised in discussion about the law.

Do men's non-revenue sports have to be eliminated in order for schools to comply with Title IX?

The purpose of laws prohibiting discrimination is to bring the disadvantaged population up to the level of the advantaged population, not to treat men's minor sports like women's sports who weren't given a chance to play. If we are going to expand opportunities for women to participate in athletics without cutting men's non-revenue sports such as wrestling, swimming and gymnastics, there has to be a reduction of current expenditures on existing men's teams and a transfer of those resources to women's programs.

If we all agree that participation opportunities and direct educational benefits to student-athletes are the most important reasons for maintaining athletic programs in higher education, then other cost saving and revenue-producing measures will be pursued prior to cutting teams or reducing squad sizes. It is unconscionable that colleges and universities are not considering or implementing some or all of the following revenue-producing or cost-cutting measures before cutting men's teams.

1. Increase revenues of men's minor sports and women's sports at the institutional and conference level. The women's sports market is virtually untapped and must be developed. According to Fulks's study of *Revenues and Expenses in Intercollegiate Athletics* (NCAA, 1994), there are at least 16 Division IA institutions in 1993 that had women's programs which generated $900,000 dollars or more. There is also evidence to indicate that the spectator and donor market for women's sports is a new market -- different from that supporting men's athletics. Therefore, developing that new market will not put women's sports in a competitive position against an institution's own men's program.

2. Add a 12th football game or extra basketball game and designate all revenues for gender equity.

3. Encourage conference members to adopt the same sports when expanding women's programs in order to realize the financial savings of competition within a reasonable geographic proximity.

4. Create leaner administrative structures at the institutional and conference levels (institutions pay for conference operating expenses).

5. Delay the construction and renovation of athletics facilities. It is absurd for an institution out of compliance with Title IX to be spending $120,000 to change the wood in the head football coach's office from oak to mahogany.

6. Eliminate the use of cellular phones.

7. Severely limit off-campus recruiting activities. We can no longer afford to spend $15,000-25,000 to recruit one basketball player.

8. Eliminate housing athletics teams in hotels prior to home contests.

9. Eliminate spring break trips to southern states.

10. Have every team eliminate their farthest away game and replace it with a contest within a 90 mile radius of campus.

11. Have every team cut their schedule by one contest.

12. Reduce the use of charter airplanes and airplane travel over short distances.

13. Prohibit glossy, 4-color cover media guides and recruiting materials.

14. Have the institution change its competitive division to one requiring lower expenditures (i.e., Division IA moving to IAA, IAA moving to II, II moving to III (non-scholarship). It is not right that the "status" of a higher competitive division is more important than the opportunity to play.

And there are many more examples like the above of what can be done to cut costs. The NCAA and conferences of like institutions should legislate many of these reductions in order to insure a level playing field.

Many institutions will choose to cut a men's sport rather than reduce the "standard of living" of men's football or basketball and will blame the need on gender equity rather than excessive and unnecessary men's sport expenditures. Congress and the public must question such actions. Cutting participation opportunities for men should be the last choice as a method of achieving gender equity.

Are women less interested in playing sports than men?

There are those who would persuade the committee to conclude that women aren't as interested in athletic opportunities as men citing lower participation numbers in NCAA member institutions, the lack of "walk ons" on women's teams and lower participation numbers in high school sports.

The issue of interest of female athletes is a critical one. **Opportunity drives interest and ability.** Title IX's purpose includes redressing historic discrimination. **There is no lack of interest and ability on the part of males or females to participate in the finite number of opportunities available at the collegiate level.**

It is important to understand that colleges and universities can only afford to support a fraction of the sport opportunities it would take to meet the interest and ability of either men or women. Currently, there are approximately 189,642 male and 105,532 female athletes on NCAA teams (NCAA, 1994). Those limited participation slots are being competed for by over 3.4 million males and 2 million female athletes participating at the high school level (in a system that itself does not yet provide full equal opportunity for girls) and there are many more girls participating in Olympic sports traditionally not offered in the high school athletic program. There will never be a lack of interest or ability on the part of males or females. The real question is how do you demonstrate that the schools limited opportunities to participate are apportioned in a fair manner.

Institutions with football teams argue that they cannot possibly offer enough women's teams to offset the high participation numbers of football and that they cannot identify enough sports in which women are interested. Washington State University, a Division IA program with football has not had a problem finding 426 interested female athletes and is still supporting a sports program for 430 male athletes (Washington State University, 1995).

Whenever an institution hires a coach, offers scholarship incentives and gives the coach money to recruit incoming students, there is no reasonable scenario where the coach comes back to the institution saying that he or she could not find anyone with the interest or ability to play on the team. If you build it, they will come.

Yet, the lack of interest argument is still being advanced based on the fact that the number of "walk-ons" (non-recruited athletes who come from the general student body over and above the student-athletes acquired through recruiting and scholarship incentives) are higher for males than for females -- especially in the sport of football which can accommodate 100 to 150 players and 60-75 walk-ons. Even if institutions discounted such walk-ons as truly reflecting a lack of interest on the part of females, they would still be required to offer three or four more women's teams or 60 to 75 more participation opportunities for women than they are currently offering.

However, let us assume that walk-on populations are derived from the campus student population rather than the recruited incoming freshman population. Are males more interested than females in sport? Institutions that wish to focus on this on-campus population point to different rates of participation in men's and women's recreational sport programs as being reflective of student interest and identify greater male participation numbers. Yet, upon closer examination, the sport and activity offerings of these recreational sport programs have traditionally reflected male sport interests rather than female sport interests. Institutions like East Carolina University that offer recreational programs based on a survey of interests of their male and female students show roughly equal participation rates.

Institutions must offer sports that women are interested in, not what the male athletic director is familiar with. If revenue production is important, **why aren't schools offering more women's gymnastics and figure skating teams? Television ratings for these sports are second only to the Super Bowl and rights fees are significant. The answer is they don't want to pay the equivalent of a football coach's salary to attract a top gymnastics coach.** They don't want to make the men share the ice with a women's team. **They don't understand that women may be interested in different sports than men.**

At many institutions, it is easy to see that the lack of female participants is a function of (1) failure to offer a sufficient number of sports and participation opportunities, (2) failure to offer sports that accommodate the interests and abilities of female participants and (3) lack of institutional commitment to existing women's programs. For instance, if, in the name of gradual development, a part-time, underpaid and unqualified coach is assigned to a new or existing women's sport program, the interest of prospective athletes may be deterred. If women are scheduled to practice and compete on a rocky softball field three miles from campus and men have a plush on-campus facility, a woman athlete might not be as likely to make a commitment to participate, especially as a walk-on. There are a large number of football walk-ons who are willing to be tackling dummies and never get a chance to play in a game because these players get treated royally and have status on campus. A similar situation has not been created for walk-on female athletes.

Often, a men's team has a recruiting budget while the women's team in that same sport has none and is dependent upon the interest of currently enrolled students. Less than 18% of all recruiting dollars go to women's sports (NCAA Gender Equity Study, 1992). Coaches of women's teams often have smaller operating budgets than men's teams and are unwilling to have

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larger squads because they have to make the choice between quality and quantity, a choice the counterpart better-financed men's team does not have to make.

It is also important to remember that most collegiate institutions, even non-scholarship programs, do not look to their existing student bodies to recruit athletes for their teams. They tell their coaches to recruit incoming freshmen for their teams. At many small scholarship and non-scholarship institutions, this recruiting is essential to the economic viability of the institution. Whenever an institution establishes a women's team, hires a coach, offers scholarship incentives or gives the coach funds to recruit incoming female students, there is no scenario where the coach comes back to the institution saying that he or she could not find any women with the interest or ability to play on the team. Interest of the student body is a moot point and there are more than enough women "out there" among the population of potential students to fill 10 times the number of opportunities colleges and universities can afford to offer.

There is also a double standard inherent in the application of an "interest and ability" requirement for girls and women in athletics. No such standard has ever been imposed for men. For men, there is an assumption of interest. If a men's sport is unsuccessful, there is no presumption of lack of ability or interest. Rather, the coach is blamed for being an unsuccessful teacher and motivator, his employment is terminated and a new and often better paid coach is obtained.

The opposite treatment occurs in a women's sport. Usually, a low paid coach is retained and the team is given a poor practice time and inadequate facilities. If few women stay with the program or come out for the team, the conclusion drawn is "lack of interest." If a women's team is unsuccessful, the conclusion drawn is "lack of ability" rather than lack of support on the part of the institution or lack of ability on the part of the coach.

If women's teams are provided with the same quality coaches, practice times, facilities, equipment and other benefits as men's teams, women athletes will participate.

The Women's Sports Foundation receives thousands of calls per year on Title IX concerns in high school and college athletics. Without exception, those who call have minimal understanding of the law. Few are eager to pursue remedy for fear of retribution against their daughters or in the case of coaches of women's teams, fear of loss of employment. The majority of cases that have gone to court in the past two years involve women's teams that have been cut from the program. The plaintiffs have suffered the worst retribution possible -- not being allowed to play. **Parents, at great financial and personal costs, have pursued legal remedies and won their cases in the lower as well as appellate courts. These parents are no match for universities with very deep pockets. The federal government should assume the burden for enforcement of the law.**

Would the implementation of Title IX regulations automatically mean cuts in football programs? Would expenditure reductions hurt football?

Title IX compliance will not kill football. In fact, expenditure reductions in football would probably improve the quality and competitiveness of the game and the net profits of major football programs. For instance, we know from our experience with collegiate basketball that the game has never been more popular or healthier than after the court was leveled by legislation requiring smaller coaching staffs, lower scholarship limits and cutbacks in recruiting.

Expenditure cuts can be made in football without hurting the game, reducing football revenues or reducing participation opportunities for football players. As long as all schools follow the same rules and expenditure limits, current competitive positions will be retained. For example, if football scholarships in Division I were reduced from the current maximum of 85 to 50, 50 full scholarships could be split among 85 players (thereby maintaining current team size). Needy students could be allowed to receive non-athletic financial aid based on need. There would be no reduction in the size or quality of teams while saving enough funds to add two or three women's teams. At many institutions, this one action would permit Title IX compliance.

Congress and the public now know that it is a myth that football makes the money to fund other men's and women's programs:

- Close to 80% of all NCAA football programs lose money
- Even among the big-time NCAA Division I programs, 67% lose money.
- Among the biggest-time NCAA Division IA programs, 32% are losing an average of $1 million dollars a year in football alone. (Fulks, 1994)

Football brings in significant revenues, but, at most colleges and universities it spends more than it brings in.

There is no reason to believe that Title IX compliance will have any negative effect on football. Washington State University, a Division IA program with a 45% female and 55% male general student population has met the proportionality standard. Washington State's football program has never been more successful. In 1994, they were 4th in the Pac-Ten with a 7-4 record and ranked 23rd nationally. Football coaches are making extremist statements without any basis of fact.

In those cases where institutions have dropped football programs, their football programs were being considered for elimination based on declining participation, almost non-existent income and increasing expenses well before gender equity provided a convenient excuse.

In this difficult economy, businesses in general and higher education in particular have had to cut back, lay off employees and suffer through considerable downsizing. While everyone else in the country is tightening their belts, football expenditures have grown at a pace far exceeding inflation. The College Football Association (CFA) has fought every effort to cap expenditures, including the prohibition of staying in hotels the night before home football games. College football teams are still producing 200 page glossy media guides and spending more money renovating the office of the head football coach than it would cost to support adding a women's team. Yet, the average deficit of Division IA football programs has doubled over the last four years (Fulks, p. 20).

Now, football is asking Congress to protect it from laws prohibiting sex discrimination so it can continue indiscriminate spending. Football needs to become more fiscally responsible. The pressure of reducing expenses that is created by the need to achieve gender equity may be the healthiest prescription for a sport that is in danger of self-destructing.

The pressure created by the need to comply with Title IX should help football programs become more profitable, just as the pressures of a soft economy have helped businesses to become more profitable. There are many ways to cut costs without hurting competitiveness as long as those cutbacks are legislated across the board at all institutions. The NCAA has the power to create these across-the-board cuts and guarantee a level playing field.

Thus, compliance with Title IX does not have to have any affect on the success of intercollegiate football programs. The standard of living of many football programs will have to be reduced in order to redistribute funds for the cause of gender equity. Such reductions need not result in lowering participation opportunities for football players or scholarship support for athletes in financial need. Neither will such reductions result in the demise of football as many football coaches and athletics directors would ask us to believe. Such predictions of disaster are nothing more than scare tactics. Football will always be a popular and important ritual on our college campuses, an important revenue producer and of interest to television and other electronic and print media.

There are those who say that if the size of men's sports teams are capped, minority athlete walk-ons in football and track will be most adversely affected. New women's sports will cater to a predominantly white population. Is this true?

There are those who would stoop to allege that supporting gender equity is supporting racism. Gender equity and sport segregation are two very important but separate issues.

It doesn't make sense to argue that keeping football teams large is the way to address the issue of sport segregation. Such a contention would support the continuation of football, basketball and track as minority ghettos and not address the real problem of discrimination and lack of encouragement of minorities in other sports.

Race and gender discrimination are equally important issues that demand the focused attention of educators. It is ridiculous to suggest that gender equity efforts should stop until sport integration occurs. Such a position results in pitting two victims of discrimination against each other: women and racial minorities.

The Position of Respected Governance and Oversight Groups

These hearings have been requested from representatives of three groups who believe that the price of gender equity is too high. You will hear testimony from (1) institutions that are not in compliance with Title IX and don't believe they should be held to Title IX's standards, (2) representatives of college football who believe football should be given special privileges and (3) representatives of men's non-revenue sports programs who are upset because institutions are eliminating their sports instead of reducing expenses in football or taking actions other than cutting programs to fund women's sports opportunities. The institutions being heard from have a vested interest in changing the law because their programs are not in compliance. The football coaches would like a guaranteed continuation of their current advantaged status. The non-revenue producing sport coaches' organizations are frustrated with the choices made by their institutions: valuing high priced opportunities and privileges for those participating in one or two men's sports more than less expensive opportunities for more students, men and women.

Congress should not weigh these positions on gender equity in athletics as more meaningful than the stated positions of respected groups of college presidents and college sports leaders like the Knight Commission, and the largest collegiate sport governance organization in the country, the NCAA.

The Knight Commission was formed to reclaim public confidence in the integrity of college sports and has addressed gender equity in two major reports:

Report of the Knight Foundation (March, 1991)
The Knight Commission included, as one of five recommendations designed to advance presidential control, the following commitment to gender equity:

> ***Presidents should commit their institutions to equity in all aspects of intercollegiate athletics.*** *The Commission emphasizes that continued inattention to the requirements of Title IX (mandating equitable treatment of women in educational programs) represents a major stain on institutional integrity. It is essential that presidents take the lead in this area. We recommend that presidents:*
> - *Annually review participation opportunities in intercollegiate programs by gender.*
> - *Develop procedures to insure more opportunities for women's participation and promote equity for women's teams in terms of schedules, facilities, travel arrangements and coaching.*
>
> *(p. 14)*

Report of the Knight Foundation (March, 1993)
In its final report, the Knight Commission highlighted the importance of the gender equity issue for college presidents:

> ***Gender Equity.*** *Against the backdrop of the imperative for cost reduction, the unfinished agenda of equity for women also demands attention. Most campuses are struggling to meet the requirements of Title IX of the Education Amendments of 1972, even as case law defining those requirements is being made. In general, according to an NCAA study of gender equity released in 1992, Title IX regulations call for accommodating the athletic interests of enrolled women, allocating financial assistance in proportion to the number of male and female participants, and making other benefits equivalent. Slowly, often in the face of opposition, opportunity for women to participate in intercollegiate athletics has become a reality.*
>
> *But the opportunity is not truly equal. On many campuses, fans would be outraged if revenue-generating teams were expected to make do with the resources available to women. Even, leaving out of the equation the major revenue-generating sports, football and men's basketball, women's programs generally operate on smaller budgets than men's. No matter the cause, the situation carries with it the threat of continued legal and Congressional scrutiny into whether young women are denied the benefits of participation in college sports.*
>
> *The equity issue transcends athletics politics because it goes to the heart of what higher education is all about. Colleges and universities advance their intellectual mission by placing a premium on fairness, equality, competition and recognition of merit. These values are as important in the department of athletics as they are in the office of the dean. Keeping faith with student-athletes means keeping faith with women as well as men. The goal to keep in mind is the imperative to create comparable opportunities for participants, whether men or women, while controlling costs.*
>
> *(p. 7-8)*

The National Collegiate Athletic Association (NCAA) voted, in January of 1994, to support gender equity as a basic principle of the Association.

2.3 The Principle of Gender Equity

2.3.1 ***Compliance With Federal and State Legislation.*** *It is the responsibility of each member institution to comply with Federal and state laws regarding gender equity.*

2.3.2 ***NCAA Legislation.*** *The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws.*

2.3.3. ***Gender Bias.*** *The activities of the Association should be conducted in a manner free of gender bias.*

Summary

Your interest and actions in maintaining Title IX as it is currently written is very important. When women are only halfway toward equal opportunity in sport twenty-three years after the law was adopted, it is obvious that now is not the time to take a step backward. It is the time to encourage more federal efforts to enforce the law. We cannot, as a nation tolerate discriminatory treatment on the basis of gender. We must prepare our daughters as well as we prepare our sons. We must give them the same educational benefits. If sport belongs in higher education, intercollegiate athletics, including football, must conform to the requirements of Title IX of the 1972 Education Amendments Act.

College football coaches and institutions who do not wish to comply with Title IX are asking the public to choose between gender equity and football. We should never be asked to choose between our sons and our daughters.

A simple analogy may be helpful. You are a parent who has a son and a daughter. For many years, you have given your son, on the occasions of his birthday and holidays, baseballs, gloves, footballs, hockey sticks and other sports equipment. His room is full of sports implements — a veritable palace of athletics privilege. One day, your daughter comes to you complaining that her brother won't let her borrow his glove so she can have a catch with her girlfriends. Would you tell her to go out and work so she can buy her own glove or would you explain to your son how important it is to share? Would you change your commitment to the importance of sharing and treating your children equally if your son advanced the argument that his sister would destroy, lose or in some other way damage his glove — or his football?

Thank you for this opportunity to present my views.

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Chairman MCKEON. Mr. Neinas.

STATEMENT OF CHARLES M. NEINAS, EXECUTIVE DIRECTOR, COLLEGE FOOTBALL ASSOCIATION, BOULDER, COLORADO

Mr. NEINAS. Chuck Neinas, Mr. Chairman. I appreciate the opportunity. I guess I am representing football. I have been called a lot of things in my life but sacrosanct has never been one. Also in attendance today, we have the officers of the American Football Coaches Association: Grant Taft, Ron Skipper, and Fisher Deburry, as well as the aforementioned Tom Osborne.

We appreciate the subcommittee's interest and encourage the subcommittee's continued investigation into Title IX and the activities of OCR. We feel it is very appropriate to do that. But let me state for the record, so there can be no confusion, we do not seek repeal of Title IX. We do not seek changes that would hinder development of women's sports. We do not seek an exemption of football from Title IX. What we do seek is practical, reasonable interpretations and guidelines from OCR to keep colleges and universities from becoming prisoners of strict proportionality. The two Presidents who appeared on the previous panel elaborated on that to some degree.

Let me say that I attended a June 16 meeting assembled by OCR, and it was there that my interest was heightened because it became apparent to me that prongs two and three of the Title IX test are simply intermediate stops toward proportionality.

We believe the unique size of football teams needs to be taken into consideration. There is a policy interpretation of 1979 that promised that several institutions' intercollegiate football is unique among sports. The size of teams, the expense of operation, and the revenue produced distinguished football from other sports, both men's and women's.

If strict proportionality is the measurement to be used, what is the relevant pool to be surveyed? The entire student population? Or those who have a demonstrated interest in athletics. The second test, history of development, is rarely taken into account. Again, this was elaborated upon by President Gregorian.

Those institutions that started a women's athletic program early on are now penalized for what they have done to promote women's sports simply by the fact that they have not continued to develop sports on a year-by-year basis. It would be appropriate that the second test focus on history and development. I hope that is what Ms. Cantú was referring to.

The third test may appear to provide institutions that sponsor football the opportunity to be in compliance, but not in the manner in which it is currently being interpreted by OCR. At one time, men's sports far exceeded the number of women's sports in the college program. That is no longer true. Most institutions have men's and women's sports equal in number and, in some instances, the number of women's sports exceeds the number of men's sports, and perhaps the greatest fallacy of all lies in the assertion that the unique size of college football programs was taken into account in the development of policy interpretations.

Let me point out that strict proportionality not only impacts Division I-A, but also impacts Divisions II and III, which are lower levels of competitive classification. Take Central College of Pella, Iowa: 1,400 enrollment, 55 percent female enrollment, 125 on the football squad. No athletic grants or aid at Central College. They play the game because they want to. They are not receiving financial aid.

The problem we have is simple. This was addressed earlier. Walk-ons. What is wrong with 175 fellows who want to try out for baseball at Notre Dame. Do we have to count heads to ensure that there is some statistic-like proportionality?

And the condemnation of Division I–A football I find very interesting because all you have to do is to take a look at the most successful, visible, and financially supported women's athletic programs and they are at universities that are associated with institutions that sponsor Division I–A football.

The problem with proportionality is illustrated by the University of North Carolina, Chapel Hill. They won the Sears Cup, 13 sports for men, 13 sports for women, considered the finest program in the country last year with 42 percent male and 58 percent female. I think North Carolina is doing a fine job.

Finally, let me give a quote from a case in Illinois where the men's swimmers attempted to get their sport reinstated, but were denied by a Federal District Court judge. Because of Title IX, the Federal judge ruled against the male swimmers but stated the court is not unsympathetic to the plight of members of the men's swimming team and recognizes that Congress, in enacting Title IX, probably never anticipated that it would yield such draconian results.

Is the best measure of access and opportunity the ratio of men and women on campus strict proportionality? Or is there a better measurement? The number of sports being offered to men and women? The number of grants available to men and women, not the number that simply choose to play?

Thank you.

Chairman McKEON. Thank you.

[The prepared statement of Mr. Neinas follows:]

STATEMENT OF
CHARLES M. NEINAS
EXECUTIVE DIRECTOR
COLLEGE FOOTBALL ASSOCIATION

My name is Charles Neinas and I am the executive director of the College Football Association. The CFA is comprised of 67 universities that are classified in NCAA Division I-A which designates the most competitive classification in the sport of football. The CFA was founded in 1977 to provide a forum for universities to address subjects that are of particular interest to those involved in what is termed major college football. The CFA encourages the chief executive officers, faculty representatives, athletics directors and football coaches to work together on a common agenda. Through the years, the CFA has been in the forefront in strengthening academic standards, establishing restrictive rules governing recruiting and in the promotion of college football.

The Board of Directors of the CFA (roster attached) is most appreciative of the committee's willingness to consider what impact Title IX and the activities of the Office for Civil Rights (OCR) have upon college athletics. While created to consider matters related to major college football, our interest extends to college football at all levels as well as intercollegiate athletics for both men and women.

My primary mission today is to encourage continued congressional review of Title IX and to analyze the appropriateness of the interpretations and regulations that were adopted 20 years ago. In view of the changing landscape of intercollegiate athletics and the continuing progress that has been made in the development and growth of women's sports, there should be consideration as to whether the guidelines and Policy Interpretations of OCR reflect the current state of intercollegiate athletics.

For the record, let me state the following:

(1) We **DO NOT** seek repeal of Title IX.

(2) We **DO NOT** seek changes that would hinder the development of women's athletics.

(3) We **DO NOT** seek exemption of football from Title IX.

(4) We **DO** seek practical and reasonable interpretations and guidelines from OCR to eliminate colleges and universities from becoming prisoners to a strict proportionality test.

OCR established three tests in determining compliance with Title IX: proportionality, history of development and interest and abilities. Although OCR repeats that it utilizes the three tests in determining compliance, it is apparent by its actions that

OCR considers the history of development and the interests and abilities tests as intermediate measures in reaching proportionality.

We believe that the unique size of college football teams needs to be taken into consideration as the Office for Civil Rights Policy Interpretations of 1979 promised.

> At several institutions, intercollegiate football is unique among sports. The size of the teams, the expense of the operation, and the revenue produced distinguish football from other sports, both men's and women's. Title IX requires that "an institution must comply with the prohibition against sex discrimination imposed by that title and its implementing regulations in the administration of any revenue producing intercollegiate athletic activity." However, the unique size and cost of football programs have been taken into account in developing this Policy Interpretations (Policy Interpretations, Section IX, Appendix A, paragraph 5, 71419).

Clearly, football was intended to be covered by Title IX, and the cost of certain aspects is what the Javits Amendment required as sex neutral considerations; i.e., the fact that football would cost more is not discriminatory. However, the unique size of college football teams is not taken into consideration by the Policy Interpretations, and the result is that current interpretations by OCR and the courts in imposing strict proportionality is narrow and unworkable.

At the time the Policy Interpretations was developed (by a panel of "experts" comprised of university presidents, athletics directors, representatives of women's athletic organizations, OCR attorneys and others), women's sports were governed by the Association of Intercollegiate Athletics for Women (AIAW) and men's sports were governed by the National Collegiate Athletic Association (NCAA) and the National Association of Intercollegiate Athletics (NAIA). These organizations had conflicting rules and interests. It is our belief that one of the reasons the section on the "effective accommodation of interests and abilities" has been the subject of controversy and conflicting interpretation is the diverse interest represented by those involved in drafting the Policy Interpretations in the late 1970s.

The first part of the three-part test, proportionality, originated as a threshold assumption of compliance. It was never intended to be an ultimate goal. The first OCR Investigator's Manual of 1980 made that clear, "Title IX does not require institutions to offer . . . a proportional number of intercollegiate participation opportunities" (1980 Investigator's Manual, page 122, second paragraph). The proportionality test was adopted from OCR's experiences in the desegregation of school districts where it adopted a "substantial proportionality" test, not the strict proportionality test utilized in connection with Title IX.

If a strict proportionality measurement is used, what is the relevant pool to be surveyed, the entire student population or those that have a demonstrated interest in athletics? There have been a number of surveys undertaken by reputable sources in an attempt to distinguish if there is a difference in the interest in athletic participation between men and women. Studies by the U.S. Department of Education, The Educational Testing Service and Cooperative Institutional Research Programs at UCLA, as well as participation statistics by the National Federation of State High School Associations consistently reveal a ***higher athletic interest among males*** than females.

The five percent or less standard considered in Title IX cases appears to have originated from an out-of-court settlement of various lawsuits (e.g., Sanders vs. University of Texas) that is neither practical nor workable in institutions that sponsor football or have a larger percentage of females in the undergraduate enrollment.

The second test (i.e., history of development) is rarely taken into account by OCR or the courts. This test calls for the following:

> ". . . whether the institution can show a continuing practice of program expansion, which is demonstrably responsive to the developing interests and abilities of members of that sex."

As is evident throughout an analysis of the Policy Interpretations, OCR has not developed any policy clarification to define what constitutes a history of continuing practice of program expansion.

When Title IX was implemented, many colleges and universities accelerated the development of women's programs and initiated several sports. For example, Brown University, which currently sponsors 17 sports for women, actually started 13 sports for women within a short period of time in the 1970s. Brown and other institutions that made an early commitment to women's athletics have received no credit for what they have accomplished in the development of women's sports on campus. In fact, such institutions are penalized for their history of promoting women's sports. It would seem entirely appropriate that the second test focus on history **AND** development rather than utilizing only program expansion.

The third test (i.e., interests and abilities) may appear to provide institutions that sponsor football the opportunity to be in compliance, but not in the manner in which it is currently being interpreted by OCR. The test provides:

> " whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program."

It would appear logical and reasonable to assess the voluntary activities on the campus through a review of participation in club sports or intramural activities. Also, consideration should be given to those sports that are popular at the high school level in the area in which the institution is located. Utilizing such analysis, an institution could determine if there was unmet interest, but OCR continues to emphasize strict proportionality by making the third test more difficult to satisfy. Institutions are now being required to consider the athletic interests of potential students (those that may or may not attend the university) in accommodating the interests of actual students at the university. The rationale of such an approach is difficult to understand. For example, if a particular women's sport is played in one part of the country but is not popular in another part of the country, what is the institution's obligation? The Eastern Illinois case is an example where OCR declared that the university must add field hockey for women although the sport is not played in the area in which the institution is located. It is absurd to add varsity sports absent any demonstrated interest and ability within a particular institution.

The 1980 Investigator's Manual states: "The absence of expressed interests by women . . . may often be a sign that the institution needs to increase the awareness of women of athletic opportunities and to develop club, intramural and recreational programs for women" (1980 Investigator's Manual, page 128). We support this approach. Creation of opportunities in such a manner could allow women's sports to blossom or fade, and that is the true test of interest.

At one time the number of sports offered men at a university far exceeded the sports offerings for women. This is no longer true! At many institutions the number of sports for women are equal to or greater than the number of sports offered for men.

Also, it is not true that the overall growth of women's programs has not been at the expense of men's sports. Universities have had to accommodate the need to expand programs and increase opportunities for women and in so doing eliminated men's sports for a variety of reasons. For example, during the past ten years, 64 NCAA members have discontinued men's swimming. Over the last 20 years, the number of wrestling programs in the NCAA has been reduced from 401 to 261. A survey of CFA members indicates that in the last ten years there have been 123 sports added for women and 39 sports for men have been discontinued.

Perhaps the greatest fallacy of all lies in the assertion that the unique size of college football programs was taken into account in the development of the Policy Interpretations. As discussed earlier, this simply is not true. Another problem with the Policy Interpretations is that it makes no distinction between the different division levels. While the I-A and I-AA distinctions are for the sport of football, most institutions competing at each level have different funding sources. Many of the Division I-A institutions have fully funded women's programs that benefit tremendously from the existence of football and the revenue that is generated through gate receipts, television and donors to the athletic program whose primary interest is college football. Those universities where football teams compete at the I-AA level do not have the same funding resources but also do not have as many scholarships or coaches. These institutions depend heavily on financial contributions from alumni and fund raising to support their intercollegiate teams because they do not enjoy the same level of attendance or interest.

The problem of strict proportionality impacts upon all institutions sponsoring the sport of football whether it be at the Division I-A level or Division III. Footballs, helmets and shoulder pads cost the same whether you are buying equipment for the University of Nebraska or Central College of Pella, Iowa. The Nebraskas, Penn States and Notre Dames of the world will continue to sponsor football because it is the primary source of income that funds the entire athletic program and also serves as a public relations and fund raising instrument for the university as a whole. Other men's sports at such institutions, however, may suffer as a result. It is when you talk about those programs sponsored at the Division II and the Division III level of the NCAA that football is in jeopardy of being discontinued.

There are two indisputable facts when comparing participation rates between men's and women's sports. First, football *requires and attracts* a larger number of participants. The overall average squad size in the sport of football ranges from 117 at the Division I-A level to 77 at the Division III level. Second, more men are interested in participating in intercollegiate athletics than women, even though at the Division I level there is more financial aid available per capita and absolute dollars for the women in matched sports. An analysis of the 1993-1994 participation study by the NCAA illustrates the point. Comparing like sports at the Division I level (basketball, cross country, fencing, golf, gymnastics, lacrosse, skiing, soccer, swimming, tennis, track and field [both indoor and outdoor], volleyball, crew and squash), men's participation average total is 347.9 and the women's participation average is 274.6. Yet more grants are available to women in these sports than to men. Nonetheless, men represent 56 percent of the participants and women represent 44 percent. Would this meet the strict proportionality test if a student body was 50 percent male and 50 percent female? It is even more onerous if the female student body is greater than 50 percent. It definitely would not meet OCR's compliance test and demonstrates the absurdity of strict proportionality.

Let us cite a specific example. The University of North Carolina at Chapel Hill was awarded last year's Sears Director's Cup that recognizes an institution's athletic achievement by combining the success of its men's and women's sports programs. The University of North Carolina at Chapel Hill currently has an enrollment of 42 percent male and 58 percent female. It sponsors 13 sports for women and will add a fourteenth sport for women next year. Women's sports do not lack for funding at the University of North Carolina. The institution also sponsors 13 sports for men. The participation rate in the athletic department, however, is almost the reverse of the gender enrollment of the student body with more than 50 percent of the participants being male. Who is to say that the University of North Carolina is not providing adequate competitive opportunities for all students on the campus, both male and female?

Some advocates of women's athletics have stated publicly that a method to achieve strict proportionality would be to reduce opportunities for men. They would eliminate those that wish to try out for a team, what we refer to as walk-ons. Because women do not try out in the same numbers their ill-founded solution is to eliminate opportunities for men and that is not the American way. Many of those that walk on do not make the final squad. Some, however, become outstanding athletes and major contributors to the university, as many coaches will testify.

Let us consider proportionality at the Division III level. Central College of Pella, Iowa has long had a successful football program. Central College is proud of the fact that of a student enrollment of 1,400, of which approximately 55 percent is female, there are 125 members on the football squad. At the Division III level, those that are attending college pay their own way. There are no athletic grants-in-aid. The reason that they are on the football squad is that they want an opportunity to play the game. Should Central College be required to limit the number that want to play football because of a strict proportionality test?

Those who attack football concentrate primarily on those institutions that sponsor the sport at the highest competitive level, Division I-A. In so doing, they question the need for a specific number of grants-in-aid with the expectation that if such numbers were reduced, the money should automatically go to support women's sports. This attack is unfair, unfounded and not in the best interest of women's sports. Look at the current Sears Director's Cup standings that reflect institutions having achieved success in athletics for both men and women. Without exception the highest rated programs are associated with universities that also sponsor football at the Division I-A level. The fact is that the most prominent and best funded women's athletic programs benefit because those universities also sponsor major college football. That fact should demonstrate above all else that football, despite its size and because of its popularity, does aid women's sports.

I find it difficult to believe that the sponsors of Title IX, in their desire to promote opportunities for women's education, including athletics, intended to hurt football or eliminate opportunities for men. Although Title IX is an educational act, the focus on strict proportionality rests solely on athletics and there is no investigation about the percentage of females enrolled in business or engineering or males enrolled in nursing or education. In fact, Senator Bayh, the Senate sponsor of Title IX, is quoted from the Congressional Record August 6, 1971 as stating, "What we are trying to do is to provide *equal access* for women and men students to the educational process and the extracurricular activities in a school, where there is not a unique facet such as football involved."

Let me reiterate what I said earlier:

(1) We are not asking football to be exempt from Title IX.

(2) The unique size of the sport of football must be taken into consideration. This is what the Policy Interpretations promised but failed to deliver.

(3) If participation in sports is good for men, it must also be good for women. Hopefully, there will be opportunities available to both.

(4) We seek practical interpretations and guidelines relative to Title IX. The current Policy Interpretation needs to be revisited because it is outdated and lacks the necessary clarification by the agency that is responsible to interpret it . . . OCR.

Finally, do not make those colleges and universities that sponsor football prisoners of strict proportionality.

CMN/rh/ksf

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Chairman McKEON. Mr. Dickson.

STATEMENT OF RICK DICKSON, DIRECTOR OF ATHLETICS, WASHINGTON STATE UNIVERSITY, PULLMAN, WASHINGTON

Mr. DICKSON. Thank you, Chairman McKeon.

Following the theme that you said earlier about remembering who we are, I just would like to thank the Chair and the subcommittee for allowing me, as a father of three daughters and a son, to meet my interest and ability—which was to allow my children to stay home until 9:30 a.m., Pacific time, to watch C-SPAN. So I appreciate the accommodation of my interest and abilities.

I would start by saying, as you mentioned, I am Rick Dickson, Director of Athletics at Washington State University. Washington State is a member of the Pacific-10 Conference in which we sponsor 10 women's and seven men's sports. Washington State has been recognized for being in compliance with the directed proportionality factor. Let me share with you some of the chronology and history for Washington State in coming into compliance with the proportionality test.

In 1982, Washington State was charged with a State gender lawsuit—not a Title IX suit, but a State gender lawsuit. In 1987, this decision was reversed. The decision outlined that Washington State University should afford women equal opportunity to men in terms of scholarships, dollars spent, and programs sponsored. In 1987, this decision was overturned because it had excluded football. I think it is ironic today that, eight years later, we are talking about a formula that in our case has been dealt with over a decade ago.

In 1987, the State of Washington Supreme Court overturned the exemption of football, stating, "The exclusion of football would prevent sex equity from ever being achieved since men would always be guaranteed many more participation opportunities than women." Following this decision, WSU embarked on a plan to provide participation opportunities for women commensurate with their participation in the student body, as required by the court decision.

You have my written statement, so I think I will skip to some highlighted parts here. You have heard today different classifications, different institutions. Washington State is a I-A, Pacific-10 Conference, one of the most noted and noteworthy conferences in the country and, as we said, what was done at Washington State was to review the model of the athletic program. Today that model consists of seven men's and 10 women's sports.

Currently, in the 1994-1995 academic year, the undergraduate female enrollment at our institution is 48 percent of the student body. A total of 250 female student-athletes participate in varsity intercollegiate sports at Washington State University. For our men, the number is 243. So we are roughly at a 51 percent/49 percent proportionality factor.

We do—for those of you who don't know in this part of the country—participate in men's football. By the way, for the third time in the last five years, we did just participate in a bowl this past post-season. We will have the privilege, some would say, of competing against the esteemed University of Nebraska next fall. So we do participate very successfully in that sport as well.

In addition, our men's basketball program has been in post-season play three of the last five years. So I think Washington State's real purpose in being here today is to provide you with a case study to view. You have a I–A, the highest level of competitive intercollegiate athletics, a program that has been held in high regard for its ability to meet compliance, as set forth by our State court some 15 years ago.

In addition to that, I think we have constantly and continuously tried to review the complete composition of our programs, to make certain that some of the things that have been brought forward today—meeting interest and abilities—are a continuous effort. It has to be a continuous effort. Some of the things that have also been brought forward today, such as how do numbers such as 175 baseball players, for example, impact an institution's ability to fund a program, equitable programs?

I would tell you, as a decisionmaker, as a bill payer, as a person who has to deal with those agendas daily and weekly, when you take on that much, your infrastructure has to grow accordingly. And because of that, you have to look at the impact it has on equity throughout your programs.

So, again, I look forward to visiting with the subcommittee and answering questions. But, again, the purpose for Rick Dickson and Washington State being present today is to say that, under the current conditions, it is achievable. We have shown that, not with a tremendous detriment to our ability to compete, but with a strong institutional commitment to move forward to have a composed athletic program that affords equitable opportunities and to operate accordingly.

Thank you.

[The prepared statement of Mr. Dickson follows:]

Prepared Testimony
Rick Dickson, Director of Athletics
Washington State University
Pullman, Washington

Tuesday, May 9, 1995
Washington, D.C.
Hearing, U.S. House of Representatives'
Committee on Economic and Educational Opportunities
Subcommittee on Postsecondary Education,
Training and Life-Long Learning

I am Rick Dickson, Director of Athletics at Washington State University in Pullman, Washington.

WSU is a member of the Pacific-10 Conference and competes in 10 women and seven men's sports. They are, for women, soccer, volleyball, cross-country, swimming, basketball, indoor track, crew, outdoor track, tennis, and golf. For men, our sports are football, cross-country, basketball, indoor track, outdoor track, baseball, and golf.

I'm here to share the experiences of our institution which is in compliance with what has become the most controversial issue regarding Title IX -- the proportionality test. Washington State University came to its present status as a result of a state of Washington Supreme Court decision in 1987. This decision resulted from a lawsuit, filed in 1982 in state Superior Court, by a group of WSU women student-athletes and coaches of women's sports.

That was the genesis of where WSU is today. Washington State has achieved equity in providing access to the educational benefits of intercollegiate athletics for both young women and men because we believe this is the right thing to do and we made an institutional commitment to this effort.

Let me give you a chronology of the steps we took to balance our program.

Between 1982 and 1987, we evaluated all of our sports in terms of our location, competition available, programs being offered in Washington high schools, and financial considerations. As a result of this evaluation we restructured our program to meet the equity requirements established by the state Superior Court -- which at that time exempted football -- and to provide a program that we could afford.

As a result of this restructuring, women's field hockey, women's skiing, women's gymnastics, men's wrestling, men's and women's rifle and men's and women's junior varsity programs (in all sports) were terminated and women's golf was added. During this period of time, the primary focus was on enhancing the quality of the programs offered for women in regard to equipment, facilities, services, coaching, publicity, scheduling, and other areas.

In 1987, the state of Washington Supreme Court overturned the exemption of football, stating, "The exclusion of football would prevent sex equity from ever being achieved since men would always be guaranteed many more participation opportunities than women." Following this decision, WSU embarked on a plan to provide participation opportunities for women commensurate with their participation in the student body as required by the court decision.

In 1988, we fully funded all of our women's sports to the NCAA scholarship maximums.

In 1989, we added women's soccer to our program and in 1990 we added women's crew. Also, in 1989, Washington State University spearheaded a collaboration with other state higher education institutions to educate the state Legislature about gender equity issues in intercollegiate athletics.

As a result of this effort, three pieces of state legislation were passed. One required the state Higher Education Coordinating Board and the state Superintendent of Public Instruction to sponsor a gender equity in athletics conference for coaches, administrators, teachers, the news media, and other personnel involved in interscholastic and intercollegiate sports. The second was an omnibus gender equity bill. It required higher education institutions to evaluate all of their programs -- for example, counseling and guidance services, financial aid, access to campus employment opportunities -- and identify and correct any areas of discrimination that were found. The third piece of legislation was a tuition waver bill. It allows state four-year colleges and universities to withhold one percent of their undergraduate tuition and fees collected and apply those funds to achieve gender equity in athletics. This legislation was effective with the 1991-92 academic year.

Today, in the current 1994-95 academic year, our undergraduate female enrollment is 48 percent of our student body. A total of 250 of our student athletes are women and 243 are men.

In looking at our progress in these past 13 years, Washington State University had to make many difficult decisions, but knew we had an obligation to provide equitable opportunities for both women and men and we knew were were doing what was right. WSU is very proud of what it has accomplished. We know that we still have areas in which we can improve. We are continuing to evaluate our program to ensure we are providing quality opportunities for student-athletes, be they women or men, equal access to the benefits of participation in intercollegiate athletics; and a program that is within our financial resources.

Thank you for the opportunity to tell you of Washington State University's success in responding to the challenges of achieving equal opportunity in intercollegiate athletics.

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Chairman **McKeon**. I had to smile a little bit when you said that Washington State participates in football. Coming from a Pacific-10 area, I would say they participated quite well over the years.

Mr. **Dickson**. Thank you.

Chairman **McKeon**. Mr. Williams.

Mr. **Williams**. Thank you.

Mr. Neinas, you mentioned toward the end of your testimony that walk-ons were in fact a problem and then cited that it had been raised earlier. How would you deal with it? Would you single out football walk-ons and not count them? How would you deal with them?

Mr. **Neinas**. I think there has to be a better way than simply counting those wishing to try out, when they are not truly varsity players.

The fact is, Mr. Congressman, that for whatever reason, cultural, societal or whatever, males will walk on in greater numbers regardless of the sport, in matched sports, for example, with an NCAA Division I, where you have more grants in aid available to women than to men. For example, swimming is 14 percent for women, 9.9 percent for men. You will find that the athletic squads for the men still are larger than the women's. So I think there has to be a better way than to just simply count heads.

Now, football puts it all out of balance. But Mr. Dickson did not note in his previous comments that Washington State—you correct me if I am wrong, Rick—chose to cap the size of their football squad. I don't know that that would be a position that would be taken at every institution, because I think the whole thrust should be opportunity. I think, obviously, that as women's sports grow, more women may be willing to walk on than have been in the past.

Mr. **Williams**. Mr. Dickson, your school is one. There are others. Stanford is noted as having found its way through the maze of Title IX successfully without court challenge. What do you suggest is the reason that your school has provided the kind of leadership toward equity that it has? Is it a school President who took the issue to himself? Is it the athletic director? How did you manage to come this far without confronting the obstacles that some other schools have had?

Mr. **Dickson**. I would like to claim it was totally the responsibility of the athletic director, but I have only been in a year, so that can't be the case. I think it is an institutional commitment.

Again, we faced some court-mandated objectives some 15 years ago. But how we met those objectives, I think the crux of the success at Washington State, was that it became an institutional commitment through the Board of Regents, through the President, as extended and carried out by the Athletic Director and coaches and so forth. First, I think, we recognized that we had to recompose our program. Our current athletic program didn't afford equitable opportunities. Second, the spirit of how the institution went about meeting those objectives, I think, was the key to the success. The premise was, we will afford equitable opportunities for men and women of the State of Washington and in the areas in which we recruit.

Beyond that, it became business decisions. There were financial considerations in determining how we met those objectives, how we met those, really, cost objectives. There were institutional decisions made towards that. They were not decisions made in a vacuum. There were no sacred cows, if you may.

Again, I think the experience that we went through and the way that we went through it show that, I think, the key of it was that to recompose our program, we made a commitment, both financially and philosophically, to operate in an equitable manner for all of our student-athletes and when that was done, then it was a matter of continuous follow-through and measurement of that. And we had the commitment from the highest level to do that.

Mr. WILLIAMS. It would seem to me, Mr. Chairman, that this problem is not easily solved, and I personally think both sides, particularly President Gregorian with Brown, have made telling points here in the testimony this morning and afternoon.

It does seem to me, though, that if the schools that have had difficulty here could learn from the schools that have not, we might be able to satisfy this American dilemma more readily than either through the courts or through new legislation.

And finally, I wanted to note that Title IX is an antidiscrimination law. America does not consider institutions in compliance with antidiscrimination laws simply because they make steady progress toward not discriminating. Complying with antidiscrimination laws is achieved when institutions stop discriminating. No antidiscrimination law is satisfied because the institution is moving in the right direction. The law is satisfied only when the institution stops discriminating intentionally or unintentionally. Some institutions are found not to discriminate. Other institutions might learn from them.

Thank you.

Chairman MCKEON. Thank you.

You know, I think that one of the things that makes this so tough is that we are hearing from people on both sides of the issue that there is discrimination going both ways.

Mr. Dickson, you commented that Washington State has 10 women's sports and seven men's sports at the varsity level.

Mr. DICKSON. Correct.

Chairman MCKEON. You don't have wrestling or soccer or swimming or tennis, men's teams?

Mr. DICKSON. We do not.

Chairman MCKEON. Why is that?

Mr. DICKSON. If you go back, Chairman McKeon, to the State suit that was filed in 1982, one of the things that was required was for the institution to develop a plan of how we would reach equitable opportunities.

Chairman MCKEON. Let me just ask a shorter question. At your school, do you still have men who would participate if you had wrestling or soccer or swimming or tennis, if you weren't precluded from that by a court case?

Mr. DICKSON. Probably not at the varsity level. I think that is the key distinction.

Chairman MCKEON. Is that because those sports have gone to other schools on scholarships.

Mr. DICKSON. Correct. Correct. Being that they were recruited rather than, as in the instance of a Brown, where it is a student body.

Chairman MCKEON. A top high school wrestler may want to go to Washington State for some other reason, but he is more likely to go where he can get a scholarship that will provide financial support for his education.

Mr. DICKSON. And, Chairman McKeon, I think that is something we deal with continuously within our scope and ability, what programs can we offer at the varsity collegiate level. I mean, that is something that is going to be ongoing for us. We, obviously, can't offer, no institution can, at that level every competitive opportunity, whether it be men or women. They couldn't afford it. It is not affordable.

I think that our responsibility is to prioritize, to continuously keep a finger on the pulse of both our region and our State, as well as our campus community, to see what those interests are and prioritize them and then sponsor programs that reflect those interests accordingly.

Chairman MCKEON. This doesn't just happen at the college level. I was on a high school board for years and, before I went on the board, they had cut wrestling on the high school level because, again, of finances. And that was just a decision that the board made at some point, that they could only do so much, and they cut it out at that level.

Mr. Kerr.

Mr. KERR. Just a quick comment. I agree with you. But there is not one NCAA program for wrestling in the State of Washington. I am not saying that we should mandate, you know, specific schools, but I would think there should be at least a couple because those kids don't have anywhere to go. And when you are talking about giving them a partial scholarship because we get 9.9 percent for putting 10 wrestlers on the mat and you get a kid out of State, it is a very difficult situation.

Chairman MCKEON. It probably follows into the high school level down if you don't have it at the university level.

Mr. KERR. There are over 351 high school programs.

Chairman MCKEON. In Washington?

Mr. KERR. Yes. There are 33 high school programs for every one college wrestling program. It is one of the worst ratios. I mean, we are getting hit like crazy. In our national championships, we sold out. We had over a $1 million gate, thanks to the University of Iowa.

Ms. HILLIARD. I would just like to make a comment pertaining to the number of sports that are offered. And in my sport, rhythmic gymnastics, unfortunately, even though we have champion athletics, there is not one school which has this relatively inexpensive sport. We have to understand there are many females in high school athletics, but club athletics because of the opportunity for scholarships. If you are a parent—thank goodness my parents let me do my sport—you make a decision on what sport you are going to choose for your daughter and you have an opportunity for a scholarship.

One point, as far as walk-ons are concerned is, in a situation of football and a situation of female athletes, being a walk-on and having the opportunity, it is okay to have football walk-ons count if you compare it to the junior varsity level, but only if the varsity opportunities are already available. And in the instance for a female athlete, if you have a situation where you want to be on the softball team yet you have a rocky field three miles away from the school, there is less likelihood that you are going to want to be a walk-on athlete. There is not much incentive as opposed to being a walk-on football player where you have a lot of special privileges in your school.

Chairman MCKEON. My granddaughter just broke her elbow in gymnastics, which is a tough sport.

Ms. HILLIARD. She ought to take rhythmic gymnastics, which is a little safer.

Chairman MCKEON. Dr. Grant, my time is up.

Ms. WOOLSEY. I want to compliment Mr. Dickson and Washington State University. I am an alumna of the University of Washington. I am a "dog," but I also——

Mr. DICKSON. Better looking than most of the dogs that I know.

Ms. WOOLSEY. Thank you.

I would like to talk with Mr. Kerr about something. In your written testimony, you referred to San Francisco State University dropping their football program. You say that is because of the lawsuit brought about by NOW, which is true, and it relates then in your testimony to the OCR's gender quotas.

I don't know if you were here when I said that my son was an All-American. Well, it was from San Francisco State University. My point is, he was playing football in the 1980s, and San Francisco State is not a football school. It was earlier on. It hasn't been for the last 15 or more years. My son didn't go for football; he went because he was a broadcast major. He went for the school and what it provided him. It was a miracle he did so well in football, but there were times when there was never any football program. The equipment was faulty. The equipment was old. There were times when I would sit—believe me, I was a fan—and he would say to me, "Mother, we can hear you out on the field." Well, guess what? The defense needs a cheerleader and I guess I was there.

That isn't a football school and I think for you to use that as an example and blame gender quotas for that school's football program going down is falsifying what we are all about here. We are about looking at really what we need to do for Title IX. That is not a good example.

Mr. KERR. May I respond?

Ms. WOOLSEY. Sure.

Mr. KERR. Do you realize that Sonoma State no longer has a wrestling program? One of your sons was a wrestler, and he might have wanted to go there.

What happened at San Francisco State is, as you know, by 1998, the California State university system has to achieve within 5 percent proportionality. The Athletic Director at San Francisco State asked the wrestling coach to call me to ask that I write her a letter saying, basically, thank you for dropping football and saving wrestling. She was faced with dropping five or six male sports or dropping football.

Ms. WOOLSEY. But football wasn't one of their sports.

Mr. KERR. I trust you disagree. But if I had a son who wasn't good enough to play Division I but was good enough to play Division II, and he didn't get offered a scholarship because they don't give scholarships at San Francisco State and he could have gone to San Francisco State and played Division II football, I would rather have him do that than not play.

So what we are——

Ms. WOOLSEY. No, listen. My point is, I loved him playing football. He was a great player. He went to school for his broadcast major, but I am telling you, that school was not supporting football way before there was any question about gender equity and gender quotas. The stands were empty. It is a commuter school. You just can't use that as an example.

Mr. KERR. I got your point. What I am saying is, there are levels of competition to where that exists. For example, there was an earlier complaint about the number of people per room. If you take the top mattress off the bed, you can get eight wrestlers in a room, and sometimes we do that. All I am saying is, there are differences in levels of competition. There are differences out there.

Ninety-six percent of the high school dropouts are not involved in extra curricular activities. Why would we ever discourage somebody from an extra curricular activity? Granted, athletics is not the only thing and it is not the most important thing. I am just saying, for some of those San Francisco State football players, which had a very diverse mix, they no longer are playing football and it affects them.

Right in front of me are letters from wrestlers who just had their programs dropped four days ago, and I don't think you would like to read those letters because it might bring tears to your eyes.

Ms. WOOLSEY. Believe me, I don't think we invest nearly enough in our education system and in our kids in general, and I think athletics is part of that investment, but I don't want you using a school that doesn't particularly care about their football program anyway as an example of what is going wrong here. That is my point.

Thank you.

Chairman MCKEON. I guess that is the end of our questioners. Dr. Grant, you had a point that you wanted to make?

Dr. GRANT. Yes. I am not a proponent of dropping men's sports. In fact, I would do anything other than drop men's sports. I am an especially big fan of men's minor sports. But when the financial situation is as it is today, and if there is no other money, there must be reallocation. There just simply must be.

And while it is very sad to read letters from wrestlers whose sport has been dropped, believe me, it is infinitely sadder for me as an Athletic Director to face hundreds of young women who have never, ever had the chance. I don't know how you would face them to explain why they did not have their opportunity during their short four-year turn at the university. That is what Title IX is supposed to be all about.

Chairman McKEON. Again, we would like to thank you for being here today, for taking part in this discussion, this debate. I think that it has been very enlightening. I know it has been for me. I think it will have been for the subcommittee.

If you think of something that you would have liked to have said but didn't get a chance to say, please call, drop a note, however you would like to get that information to us. We will see that it gets in the record.

And if any further action is taken on this and we move any further, we will certainly make sure you are a part of it.

Thank you for what you are doing for our young people, both the boys and the girls, the men and the women. Thank you very much.

[Whereupon, at 12:32 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows.]

NATIONAL ASSOCIATION FOR GIRLS & WOMEN IN SPORT, RESTON, VIRGINIA

On behalf of the 10,000 professional educators who are members of the National Association for Girls and Women in Sport [NAGWS], I ask your support in maintaining the *current* Title IX interpretations. All of the data show that Title IX has had a tremendous positive impact on sports programs for girls and women in our schools and colleges.

Girls and women receive significant benefits through sports participation [as do boys and men]. These go well beyond sports skills and strategies. These include feelings of competence, mastery, self-esteem, self-discipline, self-reliance, self-worth, cooperation, perseverance, and leadership skills. These skills are needed to be productive members of our society. This is why sports programs are so important.

It is essential that the gains which have been made over the past 20 years be maintained, and that sports programs continue to be available for our daughters as well as our sons.

Your support in this undertaking is appreciated.

SUE M. DURRANT, PH.D.,
NAGWS President.

MICHIGAN INTERCOLLEGIATE ATHLETIC ASSOCIATION, SPRING LAKE, MICHIGAN

The May 9, 1995 Congressional Hearings on the current interpretation of Title IX are of grave concern to the advocates of female athletes. Special interest groups led by, [and funded by], various collegiate football coaches' associations and coaches of non-media men's sports are asking for modifications in the current law which will guarantee that men's programs will not be impacted by that law, i.e. men's programs will not be cut in any way. While those of us in support of the current interpretations understand their concern, [having been the ones cut throughout history], we cannot abide by a law that on one hand guarantees men opportunities, but does so for women conditionally ... as long as they don't impact men. Incidentally, NCAA research indicates that the number of men having the chance to compete collegiately is in fact *increasing*, [a statistic the coaches of men's sports fail to recognize].

History books would have to be rewritten if the laws were interpreted to say that minorities could have equal access to opportunities, only if they didn't interfere with those of the white population. That, in effect, is what some members of the male athletic arena are asking of Title IX.

SHEILA K. WALLACE KOVALCHIK
Commissioner.

STATEMENT ON TITLE IX
CHANCELLOR MICHAEL AIKEN
UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN
MAY 9, 1995

I welcome the opportunity to provide the perspective of one large public university on Title IX. As Chancellor of the University of Illinois at Urbana-Champaign, I can state unequivocally that our campus is committed to increasing the athletic opportunities available to our women students. We believe that it will be possible, over time, to serve the athletic interests and aspirations of our women students as fully as we do those of our men students. In the meanwhile, we will not take any action or make any decision that moves us away from, rather than toward, that goal.

In 1993, the University of Illinois conducted an internal Title IX compliance self-study, covering all aspects of our programs from financial aid and game scheduling to coaches' compensation and practice facilities. The self-study showed our campus to be in compliance with Title IX requirements in all respects except one: the selection of sports and levels of competition did not effectively accommodate the interests and abilities of members of both sexes.

Under Title IX, institutions can demonstrate compliance in this area in one of three ways: 1) by showing that intercollegiate participation opportunities for both sexes are substantially proportional to undergraduate student enrollment; 2) by showing a history and practice of program expansion responsive to developing interests and abilities of members of the underrepresented sex, or 3) by proving that it is already effectively accommodating the interests and abilities of the underrepresented sex.

We did not meet the first test. Women student-athletes made up about 25 percent of all athletes participating in intercollegiate athletics but made up approximately 45 percent of the undergraduate population. Neither did we meet the second test, as no women's programs have been added since 1979.

To assess compliance by the third test, we surveyed the general undergraduate student body about interests and abilities in athletics. Of approximately 25,000 undergraduates enrolled in the spring of 1993, 1,600 randomly selected students were surveyed; 85 percent responded.

The survey found that more than half of the women respondents had played a varsity sport in high school, and nearly 90 percent of those had earned a varsity letter. It also asked how many would be interested in participating at the collegiate varsity level. Of this group, 39 percent responded that they definitely or probably would be interested.

The survey clearly demonstrates that there is a significant number of women undergraduate students at the University of Illinois who have both the athletic ability and the interest to participate at the collegiate varsity level, and who are not being accommodated at present.

We are developing a plan to remedy this situation over the next five years, and we believe we can succeed, even under current Title IX guidelines.

That said, the Title IX legislation as it currently exists represents a very technical view of equal opportunity. The current rules and regulations have become a numbers game to the exclusion of all other considerations. Title IX puts Division I universities with men's football programs in an unmanageable situation, and sets expectations for compliance that are unrealistic.

Our football team, which is a typical Division I team in these respects, involves 85 scholarship athletes (almost a third of the total for all men's and women's sports), nine assistant coaches, and a $2.35 million budget. Largely because of the size and budget of the football program, we fall short of equity both in terms of the numbers of men and women student-athletes, and in terms of the dollars expended on men's and women's programs.

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To address these imbalances, we could cut men's sports or add women's sports. Having cut men's swimming and fencing in 1993 (decisions we made in response to budgetary pressures as well as Title IX), we have concluded that eliminating further men's sports is not a desirable option for two reasons: except for football, none of them involve large enough numbers of students or dollars to bring us into compliance; and reducing opportunities for men does not increase opportunities for women.

We can and undoubtedly will add women's sports, such as softball or soccer, over the next few years; but no women's sport operates at the scale of football, and adding these sports will not suffice to bring us into compliance. The cost of adding these women's sports will be considerable (estimated at more than $300,000 apiece, not counting the cost of facilities). Where will this money come from? It will have to come at the expense of academic programs (supported by tuition dollars or state appropriations); or be borne by students (through fees); or be covered through the athletic budget through cuts of other programs or increased revenue. To complicate the picture further, in Illinois, the Illinois Board of Higher Education has directed universities not to use tuition dollars or student fees for athletic programs. That leaves only the athletic budget as a possible source of funds. And what is the biggest source of revenue in the athletic budget? Football. In fact, football and men's basketball generate virtually all of the income that supports all non-revenue sports for men and women.

I believe that Title IX should be modified to take account of the impact of football programs. It is true that their size makes it difficult to achieve a one-to-one relationship between men's and women's athletic programs, in terms of both budget and head count participation; but in universities like ours football is a major source of the revenue that supports women's sports as well as men's non-revenue programs. In this way, it helps us, rather than hinders us, as we work to create greater athletic opportunities for women.

Title IX should give institutions the flexibility they need to chart an effective course toward the important goal of achieving gender equity in athletics. By flexibility, I do not mean simply that it will take more time, although it probably will, despite the fact that this legislation is nearly a quarter of a century old. I mean that we need to consider whether mere numerical equality is the best index for compliance, or whether equal quality in the athletic and educational experience of our men and women student-athletes would be a more meaningful measure. Unfortunately, numerical compliance, cost containment and quality are difficult to reconcile. At Illinois, we have given first priority to quality for our men's and women's programs. The most effective gender equity legislation would move institutions like ours in a rational and steady way toward a future where student-athletes of both sexes can count on a first-rate athletic and educational experience during their college careers.

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May 15, 1995

BY HAND DELIVERY

Honorable Howard McKeon
Chairman
Subcommittee on Postsecondary Education,
Training and Lifetime Learning
Committee on Economic and Education Opportunities
2181 Rayburn House Office Building
Washington, D.C. 20515

Re: Submission for the Record of May 9 Hearings on Title IX

Dear Chairman McKeon:

Trial Lawyers for Public Justice is the national public interest law firm that represents the women athletes and potential athletes at Brown University in Cohen v. Brown University, the Title IX lawsuit against the school. On behalf of these women, we are writing to submit a brief statement for the record of the hearing on Title IX and Athletics that was held on May 9, 1995, before the Subcommittee on Postsecondary Education, Training, and Lifetime Learning. Since the Subcommittee heard testimony about the case from a named defendant in the case -- Brown University President Dr. Vartan Gregorian -- we hope that the Subcommittee is also willing to consider the plaintiffs' perspective, and thank you for the opportunity to present it.

At the outset, we want to note that, in our view, Title IX is working well and should not be altered. We are concerned, however, that several misstatements in Dr. Gregorian's testimony might lead the Subcommittee to the opposite conclusions. We are primarily writing, therefore, to explain what happened at Brown and to correct Dr. Gregorian's misstatements.

The key facts of Cohen v. Brown University are exceedingly simple. In the Spring of 1991, Brown University announced that it was eliminating women's volleyball and gymnastics as funded varsity sports, along with men's golf and water polo. Brown said that the teams would be permitted to continue as "intercollegiate club" sports if they could raise their own funds from private sources. At the time, Brown provided $37,000 in direct funding to women's volleyball and $25,000 to women's gymnastics. It provided only $16,000 to the two men's teams combined.

When Brown made this announcement, it was clear that, by eliminating funding for the two women's teams, Brown was placing itself in violation of the three-part test for compliance with Title IX adopted in 1979 by the U.S. Department of Education's Office for Civil Rights. Even before Brown made the announcement, Brown was in violation of the first part of the test (which requires participation opportunities to be "substantially proportionate" to undergraduate enrollment): its intercollegiate athletic program was structured to give women only 38% of the opportunities to participate, even though women made up approximately 50% of Brown's undergraduates. By eliminating two active women's teams, Brown was also placing itself in violation of both the second part of the test (which requires a "history and continuing practice of program expansion . . . demonstrably responsive to women's developing interest and abilities") and the third part of the test (which requires that women's interests and abilities be "fully and effectively accommodated by the present program").

Not surprisingly, therefore, when the women sued, the federal district court found Brown in likely violation of Title IX and entered a preliminary injunction requiring the continued funding of women's volleyball and gymnastics, and prohibiting the elimination of any other women's teams until the case was tried. The U.S. Court of Appeals for the First Circuit unanimously affirmed. On March 29, 1995, after a three month trial, the district court found that Brown was, in fact, in violation of Title IX. He gave Brown 120 (now 60) days to submit a plan as to how it proposes to come into compliance.

We have urged Brown to come into compliance by increasing opportunities for women, not decreasing them for women, but we do not know what Brown will propose. We do know, however, that President Gregorian's testimony to the Subcommittee contained several misstatements of fact that need correction. The most egregious misstatements are corrected below:

MISSTATEMENT: The plaintiffs in the current suit have acknowledged that Brown's intercollegiate athletic program for women is -- in their words -- "a model for the nation."

FACT: The plaintiffs have said no such thing. When Brown agreed to settle a portion of the case by agreeing to treat the women on current teams much better than it had in the past, the plaintiffs said that the settlement would make Brown "a model for the nation" for treating men and women varsity athletes equally. It did not say Brown was generally "a model for the nation." Nor did it say that Brown was a "model" for giving men and women equal opportunities to become varsity athletes. Indeed, it isn't. It is violating Title IX by failing to do so.

MISSTATEMENT: The Office of Civil Rights("OCR") has "continuously evolving and shifting regulations governing Title IX" and the three-part test is "so ambiguous, so inconsistent, and so imprecise that [it] leave[s] judges with total discretion."

FACT: The OCR regulations governing Title IX and athletics have not changed since they were promulgated in 1975. The three-part test has not changed since it was adopted in 1979. It is extremely clear. Every judge has applied the test precisely the same way -- by interpreting the words to mean exactly what they say.

MISSTATEMENT: The district court judge found Brown in violation of part one of the test because he wrongly said that participation must "mirror" undergraduate enrollment, when the test only says they must be "substantially proportionate".

FACT: First, the judge said that, under part one, participation must "substantially mirror" enrollment. Opinion, at 33. That's the same as requiring participation to be "substantially proportionate" to enrollment.

Second, the judge's rule is entirely consistent with OCR's stated view. At page 24 of its Title IX Investigations' Manual, OCR provides the following example to enable its investigators to determine whether enrollment and participation are "substantially proportionate": "if the enrollment is 52% male and 48% female, then, ideally, about 52% of the participants in the athletic program should be male and 48% female." It's hard to see how "substantially mirror" could be any different.

Finally, whether there is a theoretical difference between "substantially mirror" and "substantially proportionate" is irrelevant to the outcome in Brown's case. The district court found Brown in violation of part one of the test because there is a "13.01% disparity between female participation in intercollegiate athletics and female undergraduate enrollment." Opinion at 59.

MISSTATEMENT: The district court judge found Brown in violation of the second part of the test ("continuing expansion") because Brown moved "too fast and too far." If Brown had "gone slowly, [it] would have been better off."

FACT: Brown was found in violation of part two (and part three) because it rejected its own Athletic Director's recommendation to upgrade women's (and men's) fencing to varsity status in the late 1980's, eliminated funding for women's volleyball and gymnastics in 1991, and failed to grant fully-funded varsity status to women's water polo and skiing after the suit was filed. Brown would not have been better off if it had deprived women of other opportunities earlier.

MISSTATEMENT: The district court failed to consider survey data that would have shown Brown complied with part three of the test (women's interests and abilities are "fully and effectively accommodated by the present program").

FACT: The district court considered all of the relevant data, including numerous survey results offer by Brown. The survey results confirmed that women's interests were not being fully and effectively accommodated. (For example, they showed that women wanted to participate in volleyball and gymnastics, which Brown was trying to eliminate.) Brown wanted to use them, however, to try to prove that men had more interest and ability in varsity athletics than women. The court quite properly held that the survey results did not prove that assertion.

MISSTATEMENT: "If Brown . . . is not in compliance with Title IX, it is hard to imagine how any institution is today."

FACTS: Brown is in violation of Title IX because it tried to eliminate two women's teams and refused to add three other women's teams for which there was extensive interest and ability. It did so, moreover, when it already offered men far more opportunities to participate than women. Other institutions can comply with Title IX -- whether or not they have extensive athletics programs -- by meeting any part of the three-part test. As Washington State University has shown, schools can comply with the law if they want to do so.

We sincerely believe that, if Congress understands the facts, it will decide that Title IX is achieving its goals. With that belief in mind, we have enclosed a brief document correcting other myths about the Brown University Title IX case. We truly appreciate the opportunity to set the record straight.

Sincerely,

Arthur H. Bryant
Executive Director

Enclosures

cc: Members of the Subcommittee
Representative William Goodling
Representative William Clay

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May 15, 1995

THE TITLE IX LAWSUIT AGAINST BROWN UNIVERSITY: SEPARATING MYTHS FROM REALITY

The recent ruling by a Rhode Island federal district court that Brown University's intercollegiate athletic program violates Title IX was hailed by civil rights advocates across the country as a major victory for women. Unable to win in court, Brown has now dispatched its lobbyists to Capitol Hill in an effort to weaken the landmark civil rights statute.

Trial Lawyers for Public Justice is the national public interest law firm prosecuting the Title IX lawsuit on behalf of Brown's women athletes and potential athletes. We have prepared this fact sheet to set the record straight and debunk the myths about the suit being spread by Title IX's opponents.

MYTH: The court's decision is a surprising and unwarranted departure from existing law.

FACT: The decision did not create a new interpretation of Title IX; rather, it followed established law. The court's ruling applied the three part test for compliance with Title IX set forth in the Policy Interpretation promulgated in 1979 by the U.S. Department of Education's Office of Civil Rights ("OCR"). This test was applied by the district court at the preliminary injunction hearing in the Brown case, applied by the U.S. Court of Appeals for the First Circuit in Brown's appeal, and has been applied by every federal court addressing the issue to date -- including four unanimous courts of appeal.

MYTH: The decision in the Brown case requires Brown to cut men's teams or reduce men's athletic opportunities.

FACTS: This is absolutely false. Indeed, after hearing all of the evidence, the court specifically found: "defendants' plea that there is nothing further Brown can do except cut, cap, or eliminate men's teams is simply not true." Decision at 68.

Contrary to Brown's claim, the court's decision left it up to Brown to determine how best to comply with Title IX; the court did not order the university to cut any men's teams. It merely held that, in light of the preexisting disparity between male and female athletic participation opportunities at Brown, the university's decision to cut the funding of two thriving women's teams (volleyball and gymnastics) and to refuse fully-funded status to three others (fencing, skiing, and water polo) discriminated against Brown's female athletes. Neither Title IX nor the court decision requires Brown to cut men's teams to rectify the imbalance. As the court wrote, Brown could come into compliance with Title IX "in a number of ways," including by "elevat[ing] or creat[ing] the requisite number of women's positions "or simply by "redistribut[ing] its resources in a way that may slightly reduce the 'standard of living' for its [current] varsity sports in order to expand the participation opportunities for its women." Decision at 67, 68.

Brown's recent athletic expenditures further demonstrate that the university could shift resources to create more opportunities for women without cutting men's real opportunities:

- In 1990, the year before Brown cut women's gymnastics and volleyball to save $70,000, the university spent $250,000 to buy out the contracts of the men's football coaching staff and bring in an entirely new staff.

- In 1991, Brown bought out the men's soccer coach's contract before it ended, at a cost of $60,000. This was the same year the university cut women's gymnastics and volleyball to save $66,000.

- In the summer of 1994, Brown needed to fix the leaking roof of its boat house. Although this could have been accomplished for around $200,000, Brown spent $1.5 million completely to renovate the structure.

- In the fall of 1994, Brown spent well over $100,000 in "expert" witness fees in an attempt to prove that men are more interested in athletics than women and to prepare lawyers to present a three-month trial.

In short, Brown's claim that it will be forced to cut men's teams is just a scare tactic to place the blame on women for historically discriminatory practices. Brown's men's athletic program continues to thrive despite the preliminary injunction in this case that required Brown to reinstate two women's varsity teams and prohibited it from cutting other women's teams.

MYTH: The Brown decision turns Title IX into an affirmative action statute, requiring schools to meet "quotas" for female athletes.

FACTS: This argument proceeds from a false premise: that the court's decision requires Brown to provide its women athletes participation opportunities in direct proportion to their enrollment. In fact, the decision imposes no such requirement. Rather, the court applied the three-part test for Title IX compliance promulgated by the Department of Education's Office of Civil Rights ("OCR"), which gives schools three, independent ways to comply with Title IX: (1) by providing intercollegiate-level participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments; or (2) by showing a truly continuing history of program expansion responsive to women's developing interests and abilities; or (3) by fully and effectively accommodating female athletes who have demonstrated the interest and ability to field a varsity team. Under Prongs Two or Three, a school can demonstrate compliance with Title IX even if its ratio of male-to-female athletes is substantially disproportionate to the gender ratio in the overall student body. Brown's claim that OCR's test "contravenes" the intent of Title IX by requiring "affirmative action" or "quotas" is simply wrong. In fact, the court specifically found that Brown could satisfy Prong Three -- and comply with Title IX -- by upgrading a handful of women's teams, even though that would still leave women with less than 40% of the opportunities to participate at Brown.

MYTH: Brown's survey results showed that men at Brown are more interested in playing sports than women. Given that fact, requiring Brown to offer the same number of sports opportunities for women and men is reverse discrimination.

FACTS: First, as explained above, the court's decision did not require Brown to offer the same number of sports opportunities for women as men. All it found was that Brown had failed to fully and effectively accommodate its women athletes by failing to support four women's teams mentioned above as varsity sports. (The court made no such finding about volleyball because, on the third day of trial, Brown announced that it was reinstating the women's volleyball team.) Brown could come into compliance with Title IX simply by treating those teams as varsity sports, even though men would still have more sports opportunities than women.

Second, Brown's survey results did not prove that men at Brown are more interested in playing sports than women. The first survey offered by Brown consisted of existing students at the university, which Brown claimed showed that men are more interested and able to participate in sports than women. The court correctly rejected this survey, stating that "[w]hat students are present on campus to participate in a survey of interests has already been predetermined through the recruiting practices of the coaches . . . Thus, the interest present on campus is controlled by Brown; to then suggest that Brown must only satisfy the relative interests of students present on campus is circular." Decision at 47.

Brown next offered a survey consisting of responses of actual Brown applicants to a question on Brown's admission form asking applicants to list activities that they might pursue at Brown. The court correctly rejected this survey as well, stating that "using the pool of actual Brown applicants fails to consider the fact that college applicants interested in a sport not offered as a varsity sport at Brown may not even apply to Brown . . . To suggest that Brown need only satisfy the interests of actual applicants where Brown's selection of program offerings affects who applies to the school in the first place is illogical." Decision at 49. Moreover, even Brown's expert witness acknowledged that his survey method was severely flawed. He admitted that the survey was incapable of identifying and distinguishing between those genuinely interested in and committed to playing at the varsity level from students with a more casual or recreational interest. He also conceded that, according to the survey, there was insufficient interest among women to field a team that, in fact, Brown was already fielding!

In short, Brown did not in any sense "prove" that women are less interested in intercollegiate athletics than men. All Brown's surveys even purported to show was that, among students applying to and/or admitted to Brown, more men expressed an interest in athletics than women. But, as the court found, this reflects Brown's practice of recruiting for more men than women athletes, rather than an inherent disinterest on the part of women to participate in athletics.

MYTH: The lawsuit was prompted by Brown's decision to cut two women's and two men's teams. That was an evenhanded approach which Title IX should permit.

FACTS: First, Brown's decision simultaneously to cut two men's and two women's teams is not as even-handed as it seems. These cuts were made against a backdrop in which men at Brown already enjoyed a disproportionately large share of the resources expended on athletics and of the intercollegiate participation opportunities afforded to student athletes at Brown. Thus, as the court concluded, "the facially even-handed demotions perpetuated Brown's discriminatory treatment of women." Decision at 2.

Second, the women's teams that were demoted by Brown faced a much heavier fundraising burden than did the men's teams. Brown saved $62,028 by demoting the women's volleyball and gymnastics teams, as opposed to $15,795 by demoting the men's golf and water polo teams. The women's teams had to raise four times as much money as the men's in order to survive. Brown's officials testified that they expected the women's teams to have trouble meeting this goal. They had very few established alumni to call on for money, and, if they could not raise the money, they would quickly lose their coaches. In contrast, Brown's officials testified that they expected the men's teams to do well despite the cuts. The golfing team's budget was minimal and could easily be raised from Brown alumni who were enthusiastic about golf. The men's swimming coach was willing to coach men's water polo on a volunteer basis and the water polo recruits could continue to be given admissions preferences as swimmers.

MYTH: Brown provides equal opportunity to men and women because it offers the same number of sports for men and women.

FACTS: The fact that Brown offers the same number of sports for men and women does not constitute "equality of opportunity." For example, how could providing a football team for men (approximately 100+ members) and a gymnastics team for women (approximately 12 members) be equal, even though it is the same number of sports? In reality, the participation opportunities at Brown are remarkably skewed against women. Although Brown's student body is more than 50% women, its intercollegiate athletic program is structured to consist of 62% male athletes and only 38% female athletes. Every year, Brown gives 210 more men than women the opportunity to participate in intercollegiate athletics. That's hardly equality of opportunity.

MYTH: If more men play sports at Brown it is because men are more interested in sports and more men "walk on" teams, while Brown has a hard time filling its women's teams.

FACTS: First, Brown's claim that the disparity in participation opportunities is due to the fact that men are more interested in sports than women is specious. This argument fails to recognize that all of the elements of an intercollegiate athletic program that develop interest and ability -- recruitment, scholarships, prestige, operational support, publicity, and the opportunity to participate in a competitive program -- have not been available to women on the same basis as they have been available to men.

The court recognized this fact in its decision, concluding that:

> Brown . . . predetermine[s] the gender balance of its athletic program through the selection of the sports it offers (some sports, by their nature, require more players), the size of the teams it maintains (as dictated by each coach's preference), the quality and number of coaches it hires, and the recruiting and admissions practices it implements.

Decision at 38 (footnote and citations omitted).

Second, there is no factual support for Brown's claim that the university has a hard time filling its women's teams. Brown's lawyers made this claim as a trial tactic, but Brown's coaches refuted it. Indeed, not one women's coach claimed any trouble finding women athletes to fill their teams. In fact, this lawsuit was prompted by Brown's decision to cut funding from two fully active, successful women's sports teams (volleyball and gymnastics). Brown was not having a hard time filling those teams; to the contrary, the teams were thriving.

Nor was there any evidence that more men than women "walk on" to teams at Brown. Brown tried, but failed, to prove this claim during the trial. In fact, when Brown's Athletic Director made this assertion in court, he acknowledged that he had no hard data to back it up. Then, plaintiffs called the coaches of virtually every men's and women's team at Brown, and they categorically refuted the claim that more men than women walk on to teams. Rather, the testimony showed that the coaches of every varsity sport except crew recruit their entire teams. And, in crew, more women walk on than men. (In 1994-95, all but 10 members of the women's crew team (team size of 50) walked on. In contrast, in 1994-95, there were zero walk-ons to football (team size of 100).)

MYTH: Equality of treatment is not an issue. Plaintiffs and their lawyers have agreed that Brown treats its women and men's teams fairly and without discrimination.

FACTS: Equality of treatment was and is an issue. The lawsuit originally charged Brown with discriminating against women (1) by denying them equal opportunities to participate in varsity athletics and (2) by treating men varsity athletes better than women varsity athletes. For example, Brown paid for new ice skates for men's ice hockey players whenever the men needed them. Women were required to buy their own, unless they received need-based financial aid, in which case Brown still would pay only half the cost.

On September 30, 1994, after extensive discovery and three days of trial, Brown entered into a comprehensive, detailed, settlement agreement that requires it to treat its men and women athletes comparably in virtually every aspect of its intercollegiate athletic program. Brown committed to institute numerous policies and procedures in its then-starting "current" year (1994-95) that it had never previously followed. As a result, among many other changes, men's and women's ice hockey players now receive the same equipment from Brown. The agreement requires Brown to continue these practices for at least three years and is, of course, enforceable by court order.

While the agreement is a major step forward, it does not wholly resolve the issue of equality of treatment in the case. By its terms, the settlement does not apply to the women's teams whose varsity status is still being litigated -- gymnastics, fencing, skiing, and water polo. The lawsuit charges that women on these teams are still being treated as second-class citizens.

* * *

HOW THE COURTS AND OCR SHOULD LOOK AT RELATIVE INTEREST IN INTERCOLLEGIATE COMPETITION BY WOMEN PURSUANT TO TITLE IX

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June 1995

INTRODUCTION

This article examines three major issues. First, how the U.S. Government has specifically interpreted Title IX since its enactment in 1972 as it relates to the issue of participation opportunities and the relative interest men and women have in intercollegiate athletic competition. This section will also analyze the degree of deference OCR should be given in light of the fact that it did not follow its congressional mandate as spelled out in the Javits Amendment and the fact that there have been conflicting positions taken by OCR and hence no deference should be given to their regulations.

Second, the article will examine numerous national data sets, studies and surveys, that show that women have relatively less interest, skills, and abilities in participating in team and other sports activities by the time they reach college.

Third, the article will examine specific evidence of interest and participation at Brown University[1] of applicants and admittees. This section will also examine national and regional high school athletic participation in athletic team competition that feeds Brown University.

DISCUSSION OF THE LAW

I NEITHER CONGRESS NOR OCR ORIGINALLY INTENDED THAT STUDENT BODY RATIOS BE IMPOSED ON UNIVERSITIES

A) Background

The OCR Policy Interpretation, issued in final in 1979,[2] sets forth a three prong test for assessing compliance with the requirement that universities effectively accommodate the interests and abilities of men and women to the extent necessary to provide them with equal athletic opportunities.

> (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments;
>
> (2) Where members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing

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[1] This section of the article will examine actual data submitted in evidence at the trial on the merits in Cohen v. Brown.

[2] This Policy Interpretation was issued in final one year after a draft was circulated and after OCR had received upwards of 700 comments "reflecting a broad range of opinion."

> practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
>
> (3) [If numbers one and two cannot be satisfied,] [w]hether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.[3]

The first prong of OCR's "effective accommodation" test asks whether the participation opportunities in intercollegiate athletics for male and female students are provided in numbers substantially proportionate to their respective enrollments. The Policy Interpretation provides no method for determining whether participation opportunities are "substantially proportionate" to enrollment levels. The Investigator's Manual states only that:

> "[t]here is no set ratio that constitutes 'substantially proportionate' or that, when not met, results in a disparity or a violation. All factors for this program component, and any justifications for differences offered by the institution must be considered before a finding is made."[4]

There are three issues that must be confronted by the courts as it relates to prong one. First, what are participation opportunities? Second, what is substantially proportionate? Third, what is the appropriate student body ratio where it is fluctuating?

Guidance on the proper measure can be found, in part, however, from the OCR's Letters of Finding. In its December 11, 1990 letter of finding to Loyola College, OCR found the student body enrollment rates were 45.4% men, 54.6% women while varsity athletic participation rates were 52.5% men and 47.5% women, respectively. The OCR found that the seven percent differential between enrollment and participation rates was not significant and that Loyola was, therefore, in compliance.

Similarly, in its April 20, 1991 Letter of Finding to Mercer University, the OCR found that a six percent differential between enrollment and participation rates was not significant. Enrollment rates were 49% men, 51% female; participation rates were 55% men, 45% women. The OCR correctly found that men and women athletes were represented in the intercollegiate athletic program in substantial proportion to their representation in the student body.

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[3] As discussed more fully in section III below, these standards are not consistent with the intent of Title IX and strict application at this time can lead to results that clearly contravene the intent of Title IX.

[4] Manual at 24.

It is apparent that to the extent that a court requires that participation opportunities "substantially mirror" student body ratios as Judge Pettine did in Cohen v. Brown University, de facto quotas are created based not on interest but on the percentage of women in the student body.

B) Deference Should Be Carefully Given, If At All, To OCR Shifting Regulations Scheme

To date, no appellate court has carefully examined the issue of the degree of deference, if any, to which the OCR's Policy Interpretation and Investigator's Manual are entitled and/or whether these two agency documents correctly articulate the standards Congress intended to have applied. When one reviews the scope of the rule-making authority Congress delegated to HEW and OCR, one finds that the delegation was limited, that the Policy Interpretation and Investigator's Manual do not fall within the scope of the delegation, and that the courts must review the documents under the less deferential standard articulated by the Supreme Court in Skidmore v. Swift & Co., 323 U.S. 134 (1944) and General Electric Co. v. Gilbert, 429 U.S. 125 (1976). And, when a court does, it can only conclude that the Policy Interpretation and Investigator's Manual are not binding on it.

1. Applicable Principles

Courts distinguish between "legislative" rules and "interpretative" rules issued by federal agencies. The former are given substantial deference. The latter are subject to more careful scrutiny by the courts.

Legislative rules are generally defined as those rules issued by an Agency pursuant to authority expressly granted by Congress in its original legislation. "When Congress delegates rulemaking authority to an agency, and the agency adopts legislative rules, the agency stands in the place of Congress and makes law." Nat'l Latino Media Coalition v. F.C.C., 816 F.2d 785 (D.C. Cir. 1987). Interpretative rules merely express the agency's understanding of a congressional statute.

The preliminary issue, therefore, is the scope of the authority delegated to the agency by Congress in the original legislation and whether the particular pronouncement falls within the legislative category or the interpretative: did Congress delegate to the agency the authority to issue

interpretations with the force of law in the format used? Once the scope of authority is determined, the degree of the deference to be given follows.

a. Weight to Be Given to Agency Legislative Rules Where Statutory Language is Ambiguous

The first issue is what deference a court should give to agency regulations when Congress has authorized the agency to issue binding legislative rules in the original legislation.

Prior to 1984, the law in this area was ambiguous and unpredictable. In some cases, the courts gave great deference to the regulations; in other cases, courts substituted their own judgment for that of the agency's. See e.g. NLRB v. Hearst Publications, 322 U.S. 111 (1944)(Court deferred to NLRB for determination that newsboys fall within definition of "employee" under the NLRA); NLRB v. Bell Aerospace, 416 U.S. 267 (1974)(Court ignored NLRB's construction of statute and held that buyers are not "employees" under the NLRA).

In Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984), the Supreme Court set forth a two-step test to be applied in cases involving an agency's construction of a statute which it administers. Specifically, the Court stated:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First always, is the question of whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; and the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Id. at 842-843.

At issue in Chevron was the meaning of the term "new-source review" under the Clean Air Act Amendments of 1977. The Court concluded that Congress had not made the policy decision underlying the definition of "source" and had delegated that policy-making decision to the Environmental Protection Agency. Therefore, so long as the EPA's regulation was not arbitrary and capricious or manifestly contrary to the statute, the Court would defer to the agency.

Following Chevron, the issue is the scope of the Chevron analysis. Does the two-step analysis articulated by the Court apply only to agency regulations, i.e. those rules that Congress has expressly authorized the agency to issue in the format used? Or does it also extend to interpretative rules, policy statements, and the like which have not been expressly authorized by Congress in the format used?

The prevailing view is that the Chevron standard applies only to legislative rules, that is the rules promulgated by an agency with the express authority of Congress. Only those interpretations that Congress intended to have the force of law should be binding on the courts and the public. See Davis and Pierce, Administrative Law Treatise, Chapters 3 and 6 (1994); Anthony, "Which Agency Interpretations Should Bind Citizens and the Courts?", 7 Yale Journal on Regulation 1 (1990). Thus, interpretative rules, policy statements, manuals, and guidelines like the OCR's Policy Interpretation and the Investigator's Manual are subject to stiffer court review.

b. **Interpretative Rules, Policies Statements, Manuals, Guidelines -- No Binding Effect and May Not be Entitled to Judicial Deference**

Two of the seminal cases on the issue of the degree of judicial deference to be given to agency interpretations of statutes in formats that are not Congressionally authorized are Skidmore v. Swift & Co., 323 U.S. 134, (1944) and General Electric Co. v. Gilbert, 429 U.S. 125, (1976).

In Skidmore, the Court addressed the issue of whether time spent by company employees in the fire hall waiting for fire alarms was "working time" for purposes of the Fair Labor Standards Act. In determining what weight to give to the interpretation articulated by the Administrator of the Wage and Hour Division, the Court set forth the following standard:

> We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experienced and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evidenced in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

323 U.S. at 140, 89 L.Ed at 129. The Skidmore Court rejected the Administrator's interpretation as being erroneous.

In Gilbert, the plaintiff challenged the legality of a corporate disability plan which excluded pregnancy related conditions from coverage under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. The Equal Employment Opportunity Commission ("EEOC") had issued guidelines which provided that benefits should be available for pregnancy related disabilities on the same terms and conditions as they are applied to other temporary disabilities.

In rejecting plaintiff's reliance on the EEOC's guidelines, the Court noted first that Congress, in enacting Title VII, had not conferred on the EEOC the authority to promulgates rules or regulations. Second, the Court noted that in the absence of Congressional authority, the courts may properly accord less weight to such guidelines than to administrative regulations which Congress has declared shall have the force of law.

Then, the Court concluded that the EEOC guidelines did not fare well under the standard set forth in Skidmore. First, the EEOC guidelines were not contemporaneous with the statute's enactment, being issued eight years later. Second, the guidelines contradicted the position the EEOC had taken earlier in an opinion letter from the General Counsel in which the General Counsel had stated that the exclusion of pregnancy related conditions from disability benefits would not violate Title VII. Finally, in the Court's judgment, the EEOC's guidelines were not consistent with the Congressional intent or with interpretative guidelines issued by the Wage and Hour Administrator.

More recently, in EEOC v. Arabian American Oil Co., 499 U.S. 244, 113 L.Ed.2d 274 (1991), the Supreme Court rejected the EEOC's interpretation of Title VII to the effect that Title VII applies outside the United States. Noting that it is one of the two federal agencies with primary responsibility for enforcing Title VII, the EEOC had argued that the Court should defer to its "consistent" construction of Title VII to apply to American citizens outside the United States, first formally expressed in a statement issued in 1989 (but previously expressed in a 1975 letter from the EEOC's General Counsel, 1983 testimony of its Chairman, and a 1985 decision by the Commission).

The Court rejected the EEOC's position citing General Electric Co. v. Gilbert, 429 U.S. 125, 140-146 (1976). The Court noted that the EEOC's interpretation contradicted an earlier position that Title VII applied only to individuals domiciled or residing in the U.S. Moreover, the EEOC's position was not contemporaneous with the enactment of the Act; it was not until 24 years after the passage of the Act that the EEOC took the position that Title VII applied abroad. Finally, the EEOC's position lacked support in the language of Title VII. 499 U.S. at 257-258.

See also Morgan v. Massachusetts General Hospital, 901 F.2d 186, 192 (1st Cir. 1990)(in determining whether certain conduct constitutes actionable sexual harassment, the court will be guided by, although not bound by, the guidelines promulgated by the EEOC); National Latino Media Coalition v. F.C.C., 816 F.2d 785 (D.C. Cir. 1987)("Interpretative rule does not have the force of law and is not binding on anyone, including the courts, though the status conferred on an agency as the delegate of Congress and by its expertise often leads courts to defer to the agency's interpretation of its governing statute."); LeTourneau v. Casa Mia, Inc., 804 F. Supp. 389, 390 n. 5 (D. Me. 1992)(in deciding that Civil Rights Act of 1991 applies retroactively, court rejected EEOC pronouncement that statute would only be given prospective relief, citing Skidmore v. Swift and stating that the EEOC's interpretation is not entitled to particular significance.); Greenwood Trust Co. v. Commonwealth of Mass., 776 F. Supp. 21, 36 n. 38 (D. Mass 1991)(citing Gilbert, court stated that though interpretations of a statute by officers of the agency charged with its administration are entitled to great deference, such "traditional deference . . . is not to be applied to alter the clearly expressed intent of Congress."); Bangor Baptists Church v. State of Maine, Dep't of Educ., 576 F. Supp. 1299, 1321 n. 38 (D. Me. 1993)("If considered interpretative, as opposed to legislative, the regulations, of course, are not binding on the Court."). Unfortunately, courts almost blindly have adhered to OCR regulations notwithstanding the shifting positions of OCR, infra, and its failure to follow the congressional mandate as articulated in the Javits Amendment.

2. OCR's Statements Are Interpretative In Nature, Not Legislative And OCR Ignored The Javits Amendment

Applying the foregoing principles to the Brown case, one must conclude that the OCR's Policy Interpretation and Investigator's Manual are interpretative in nature and not entitled to judicial deference. The Policy Interpretation and Investigator's Manual do not come within the regulatory authority delegated by Congress.

Title IX of the Education Amendments of 1972, 20 U.S.C. §1682, provides for the federal administrative enforcement of the Act by each federal department and agency which is empowered to extend federal financial assistance to any education program or activity. It further provides that each such agency is authorized and directed to effectuate the provisions of §1681 et seq. by issuing rules, regulations, or orders of general applicability. However, §1682 states that no such rule, regulation, or order shall become effective unless and until approved by the President.

Title IX was enacted in 1972. The Department of Health, Education and Welfare issued proposed regulations on June 20, 1974. The final regulations, 34 C.F.R. §106 et seq. went into effect on July 21, 1975, after being approved and approved by President Ford on May 27, 1975. Under the Chevron rule, so long as the regulations do not conflict with the express intent of Congress and are reasonable, they are binding and have the effect of law.

On December 11, 1978, HEW issued its draft Intercollegiate Athletics Policy Interpretation. A year later, seven years after Title IX went into effect, HEW issued its final Intercollegiate Athletics Policy Interpretation. Neither of these documents were approved by the President and, therefore, do not have the binding effect of rules, regulations or orders authorized by §1682.

In 1980, the OCR issued an Interim Title IX Investigator's Manual. In 1990, eighteen years after Title IX went into effect, the OCR issued its "final" Title IX Investigator's Manual.

At issue is the degree of deference due to the Policy Interpretation and the Investigator's Manual. It has been suggested that the degree of deference due is particularly high because Congress explicitly delegated to the agency the task of prescribing standards for athletic programs under Title IX. In support of this conclusion, section 844 of the Education Amendments of 1974 is cited, which states:

> The Secretary shall prepare and publish, not later than 30 days after the date of enactment of this Act, proposed regulations implementing the provisions of title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.

Pub. L. No. 93-380, §844, 88 Stat. 612 (1974).[5]

Reliance on this provision is misplaced for two reasons. First, this compromise amendment, known as the Javits amendment, was designed to ensure that the regulations upon which HEW had been working would take into account the nature of particular sports; the Javits amendment was a compromise to a provision which would have exempted revenue producing sports from Title IX jurisdiction was defeated at this time. See HEW Comments No. 72-74; 40 Fed. Reg. at 24134.[6] Second, the amendment provides for the preparation of proposed regulations within thirty days of the Amendment's enactment, July 1, 1974. The Secretary published his proposed regulations on June 20, 1974. The Policy Manual was issued five years later in 1979 and the Investigator's Manual 16 years later in 1990. Neither document was approved by the President. Clearly, they do not fall within the scope of the authority granted to the Department under the 1974 amendments.

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[5] This amendment was effective July 1, 1974.

[6] The OCR's own Fact Sheet on Title IX indicates that section 844 pertained to the regulations issued in draft on June 20, 1974, and not any policy interpretations issued years later. Furthermore, the comments to HEW's Final Regulations note:

> In addition, §844 of the Education Amendments of 1974 (Pub. L. 93-380) compels the Department to "[P]repare and publish . . . proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 . . . which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."

Comments 72-74.

Even the Policy Interpretation itself specifies the purpose of the Javits amendment:

> Some aspects of athletic programs may not be equivalent for men and women because of unique aspects of particular sports or athletic activities. This type of distinction was called for by the "Javits' Amendment" to Title IX, which instructed HEW to make "reasonable (regulatory) provisions considering the nature of particular sports" in intercollegiate athletics.
>
> Generally, these differences will be the result of factors that are inherent to the basic operation of specific sports. Such factors may include rules of play, nature/replacement of equipment, rates of injury resulting from participation, nature of facilities required for competition, and the maintenance/upkeep requirements of those facilities. For the most part, differences involving such factors will occur in programs offering football, and consequently these differences will favor men. If sport-specific needs are met equivalently in both men's and women's programs, however, differences in particular program components will be found to be justifiable.

44 Fed. Reg. at 71415-71416.

It is particularly of interest that Judge Pettine recently held that as to all matched sports that exist for both men and women that they are different. Even though Donna Lopiano, plaintiffs' expert in Cohen only testified that softball, lacrosse and ice hockey were different for men and women. Judge Pettine's ruling accentuates the fact that OCR's writing of the three prong test ignores the Javits Amendments mandate. If Judge Pettine is correct that all men and women's teams are different, then it would be virtually impossible to adhere statistical student body parity unless there were substantially more women's teams than men's. Originally, it was perceived that the proviso for reasonable provisions considering the nature of the sport referred only to football. If it applies to all sports, then the rationale for the First and Third prong is significantly undermined, if not totally obliterated. If all matched sports are different, the First and Third prongs should never have been drafted, much less implemented.

As Plaintiffs' expert, Donna Lopiano, testified "the nature of sports" is one reason why a team may be larger for one sport than for another. (Lopiano, Tr. 12/2/94, pp. 26-28, 32). Thus, according to Ms. Lopiano, men's and women's lacrosse and baseball and softball teams may be different sizes because they are different sports. (Lopiano, Tr. 12/2/94, p. 39, 46-47). Men's football and men's wrestling are two other sports that by their nature are different from any women's teams and require substantial squad sizes. The Office of Civil Rights, in establishing the substantial proportionality to student body enrollment standard, certainly did not take into account the different natures of sports which result in different team sizes. Yet, under Donna Lopiano's analysis, due to the nature of particular sports, there are upwards 100 of participation opportunities for men (on football, wrestling, lacrosse and the like) that cannot be available to women. OCR ignored this fact and ignored the dictate of Congress to make "reasonable provisions considering the nature of the particular sports." Therefore, a Court need not and should not defer to the OCR's statements. Therefore, the regulations are not reasonable.

None of the courts in the Title IX cases to date have examined with any care the scope of the rule-making authority Congress delegated to HEW and specifically whether the OCR's Policy Interpretation or the Investigator's Manual fall within the scope of that authority. When one does, one sees that Congress limited its delegation of authority, that the Policy Interpretation and Investigator's Manual do not fall within the scope of that authority and that, therefore, the two documents must be reviewed under the less deferential *Skidmore/Gilbert* standard.

3. *OCR's Statements Lack Consistency and Are Not Entitled to Judicial Deference*

The documents do not fare well under this standard. First, like the EEOC's guidelines on pregnancy disability in *Gilbert*, the OCR's Policy Interpretation and Investigator's Manual were not contemporaneous with the passage of Title IX. The final Policy Interpretation was issued seven years after Title IX went into effect and the Investigator's Manual, eighteen years after in 1990.

Second, the OCR's interpretative statements on the standard for effective accommodation have not been consistent with one another. Nor are they internally consistent.

a. *OCR's Position Varies Between Statements*

For instance, an HEW Fact Sheet issued in June 1975, states with respect to financial assistance:

> *Neither quotas nor fixed percentages of any type are required* under the regulation. Rather, the institution is required to take a reasonable approach in its ward of athletic scholarships, considering the participation and *relative* interests and athletic proficiency of its students of both sexes.

(emphasis added). Thus, HEW explicitly rejected quotas or fixed percentages. But, 19 years later a number of courts have interpreted OCR's Policy Interpretation and Investigator's Manual to require quotas and strict proportionality. The inconsistency is clear.

Similarly, in "HEW News: Final Title IX Regulations Implementing Education Amendments of 1972," dated July 21, 1975 and issued contemporaneously with the final regulations, HEW stated:

> Educational institutions are not required to duplicate their men's programs for women. The thrust of the effort should be the contribution of each of the categories to the overall goal of equal opportunity in athletics rather than on the details related to each of the categories.

Again, this language is inconsistent with the recent meaning given to the OCR' policy Interpretation and Investigator's Manual to the effect that women must be provided opportunities proportionate to their enrollment or have their interests fully met.[7]

In the 1980 Interim Title IX Intercollegiate Athletics Investigator's Manual, the OCR specifically stated that "Title IX does not require institutions to offer . . . a proportional number of intercollegiate participation opportunities (with respect to the division by sex of the total student enrollment) . . . Rather, it requires institutions to meet the interests and abilities of women to the same degree as they meet the interests and abilities of men, by providing opportunities which address the interests and abilities of each sex equally. (emphasis added)." This means that participation opportunities are to be proportionate to interests and abilities, not student body enrollment.

The OCR dropped this language for the first time in the final Title IX Athletics Investigator's Manual issued ten years later in April 1990 and eighteen years after the passage of Title IX. There, the OCR stated that the third prong addresses the issue of whether the "current program equally effectively accommodates student interests and abilities." Even there, the OCR acknowledged that participation ratios are often not proportionate to the enrollment rates for members of each sex. Yet, this court has previously found the OCR's language to mean that proportionality with enrollment is required unless the institution is fully meeting the women's interests and abilities, thereby effectively equating prongs one and three of the OCR's standard for determining effective accommodation.[8]

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[7] See also OCR Memorandum to Chief State School Officers, Superintendents of Local Education Agencies, and College and University Presidents, p. 9, September 1975.

> The thrust of the athletics scholarship section is the concept of reasonableness, not strict proportionality in the allocation of scholarships. The degree of interest and participation of male and female students in athletics is the critical factor in determining whether the allocation of athletic scholarships conforms to the requirements of the regulation.
>
> Neither quotas nor fixed percentages of any type are required under the regulation. Rather, the institution is required to take a reasonable approach in its award of athletic scholarships, considering the participation and RELATIVE interests and athletic proficiency of its students of both sexes.

(emphasis added)

The OCR had used the "equally effective accommodation" language in several earlier documents as well. For instance, in the draft policy interpretation issued in December 1978, the OCR stated that the issue is whether the interests and abilities of men and women are "equally accommodated." But, there, the OCR emphasized that "[t]he Title IX regulation does not require an equal number of men and women participants or an equal number of men's and women's sports." (emphasis added).

Similarly, in the final policy interpretation issued in December 1979, the OCR stated that the issue for the investigator to determine was "whether the current program equally effectively accommodates the current interests and abilities of male and female athletes."

The meaning that the OCR has given to these policy statements has also varied in the Letters of Findings issued to colleges and universities across the country. In some letters the OCR has seemed to reach the same conclusion that these courts effectively have, namely that prongs one and three are the same. In other letters, however, the OCR has found that even though participation rates were not in parity with enrollment rates, the institution was fully and effectively accommodating the interests and abilities of men and women. See e.g. June 16, 1987 Letter of Finding to Tennessee Technological University (Despite nearly 20 point differential between enrollment and participation ratios, OCR found program to fully and effectively accommodate the interests and abilities of women students); September 1, 1989 Letter of Finding to University of Arkansas at Pine Bluff (Despite a 30+ point differential between enrollment and participation ratios, OCR found program to fully and effectively accommodate the interests and abilities of women students, given an increase in number of opportunities for women since 1974 and no student petitions to offer other sports); December 27,

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[8] In effect, a number of courts have read the OCR's first and third prongs to mean the same thing. It ignores the latin maxim: "ut res magis valeat quam pereat." This ignores the rule of law that all language in a regulation has meaning. A court should give meaning to all provisions rather than providing an interpretation which makes a section meaningless. See e.g. United States v. Nordic Village, Inc., __ U.S. __, 112 S.Ct. 1011, 1015; 117 L.d.2d 181, 189 (1992)("A statute must if possible be construed in such a fashion that every word has some operative effect.").

1993 Letter of Finding to Southeastern Louisiana University (Although females constituted only 41% of the participants but 58% of the students, OCR found that SLU has accommodated the interest and abilities of female athletes by offering an equal number of sports to men and women, offering the most popular women's sports, increasing opportunities for women to participate in intercollegiate athletics by increasing the number of scholarships for female athletes, and by providing equivalent competitive schedules for men and women; November 10, 1993 Letter of Finding to Lewis - Clark State College (Tab 6)(Despite fact that only 36% of intercollegiate athletics participants were women while 59% of student body was female, OCR found the College to be in compliance based on the sports offered at the high school level).

b. OCR's Policy Interpretation and Investigator's Manual Internally Inconsistent

OCR's Policy Interpretation and Investigator's Manual not only conflict with other OCR statements but also are internally inconsistent.

For instance, these two documents as interpreted by the courts suggest intercollegiate athletic opportunities are to be proportionate to student body enrollment, or, absent that, accommodate any and all interest of female students without even inquiring into their relative skills and interests. But, the Policy Interpretation specifically rejects any requirement that financial assistance be provided in proportion to student body enrollment:

> This section does not require a proportionate number of scholarships for men and women or individual scholarships of equal dollar value.

44 Fed. Reg. at 71415.

Similarly, the Policy Interpretation provides the compliance with the "levels of competition" requirement of the regulations be assessed by examining, among other things, "whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionately similar numbers of male and female athletes equivalently advances competitive opportunities." 44 Fed. Reg. at 71418.[8]

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[8] Moreover, prongs one and three as interpreted by the courts contradict one another.

This variance in position undermines the OCR's credibility as an interpretative authority. Because the Policy Interpretation and Investigator's Manual contradict themselves, other OCR statements, and the regulations, they should be viewed with skepticism. No court should be bound by the OCR's policy interpretations, and instead of blindly adhering to them, should consider whether they are consistent with the purposes underlying Title IX.

4. Three Prongs As Interpreted By Courts To Date Yield Incongruous Results

OCR's three prongs as interpreted by the courts thus far are not consistent with the intent of Title IX. Strict application of them in 1994 can lead to results that clearly contravene the intent of Title IX.

For instance, in the context of team elimination, under the first prong, unless women are being provided athletic participation opportunities in proportion to their enrollment, the college or university will be in violation of Title IX, regardless of the proportion of female students who have the interest and ability to participate in varsity athletics. In other words, the substantial proportionality standard implicitly assumes without evidence that men and women in the general student body have the same interest and ability to participate in intercollegiate athletics. No support for this principle exists in the Congressional record. Moreover, it is belied by common sense and has been explicitly rejected by the Supreme Court in other contexts.

a. U.S. Supreme Court Has Rejected Population Statistics in Civil Rights Case

Proportionality with student body enrollment is the functional equivalent of imposing employment quotas on employers based on aggregate population statistics - a principle the U.S. Supreme Court has expressly rejected. See Hazelwood School Dist. v. United States, 433 U.S. 299, 308, n.13 (1977)("When special qualifications are required to fill particular jobs, comparisons to the general population rather than to the small groups of individuals who possess the necessary qualifications, may have little probative value."); Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)("If the absence of minorities holding such skilled positions was due to a dearth of qualified non-white applicants (for reasons that are not petitioners' fault), petitioners' selection methods or employment practices cannot be said to have had a 'disparate impact' on non-whites."). Indeed, in

International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339-40, n.20 (1977), the Supreme Court stated that Title VII "imposes no requirement that a work force mirror the general population." Thus, in employment cases, in determining whether an employer is hiring women in proper numbers, a court will look at whether women are being hired in proportion to their numbers in the qualified applicant pool, not whether they are being hired in proportion to their numbers in society at large. The same analysis applies in Title IX athletics cases.

Similarly, in the context of a reduction in force, a court will look at whether an employer is selecting female employees in proportion to their representation in the group affected by the layoff (e.g., job category, department, facility) and not whether the final workforce mirrors society at large. The same analysis applies in Title IX cases. Congress certainly never intended to require institutions to drop men's sports to be in compliance. In the employment context, the Supreme Court has suggested that such conduct is illegal, where affirmative action "unnecessarily trammels" on the interests of non-minorities. See e.g. Firefighter's Local Union No. 1784 v. Stott, 467 U.S. 561, 104 S. Ct. 2576 (1984)(holding quotas inappropriate in context of layoffs); Wygant v. Jackson Board of Education, 476 U.S. 267 (1986). Judge Pettine, in Brown, erroneously has concluded that courts in looking at Title IX issues should not look to Title VII cases. This approach has been rejected in virtually all Title IX cases. See e.g., Cook v. Colgate University, 802 F.Supp. 737, 742-43 (N.D.N.Y. 1992) (vacated and remanded on other grounds, 992 F.2d 17 (2d Cir. 1993).

b. Title IX Is Not an Affirmative Action or Quota Statute

The third prong if read as the courts have recently interpreted it requires full accommodation of one sex without regard for the other sex. The interpretation being given to the term "fully" in this prong has transformed Title IX from a non-discrimination statute into one requiring quotas and preferential treatment on the basis of gender and makes prongs 1 and 3 functionally equivalent. Yet, the government has repeatedly stated that Title IX is not an affirmative action statute.

Title IX specifically provides that it does not require affirmative action or preferential treatment:

> **Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any**

> **federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area:** *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

20 U.S.C. §1681(b) (emphasis added).

This analysis is consistent with language in the 1990 Investigator's Manual which directs investigators to determine whether the program "equally effectively accommodates student interests and abilities:"

> The participation ratios are often not proportionate to the enrollment ratios for members of each sex, and a history of program expansion for the underrepresented sex may not be apparent, thus leading to the question of whether the current program **equally effectively accommodates student interests and abilities**, step three of the analysis for competitive opportunities.

Manual, p. 25. Moreover, as previously noted, the effect of the court's previous rulings is to equate prongs one and three which simply does not make sense and is not consistent with rules of regulatory interpretation.

Finally, in a September 1, 1993 Memorandum, issued after the preliminary injunction decisions in this case, the OCR strongly suggested that the First Circuit's decision in Brown is not consistent with the OCR's own interpretation:

> The Policy Interpretation states that "[p]ursuant to the regulation, the governing principle in this area is that the athletics interests and abilities of male and female students must be equally effectively accommodated." In their analyses, the Brown II and CSU II **courts did not explicitly recognize that the general principle governing the interests and abilities part of the regulation is "equal effective accommodation" of the interests and abilities of both sexes.**

Memorandum, p. 25. **(emphasis added).**

5 **OCR Looks At Surveys, Club and Intramural Participation, Feeder Schools and the Like**

The OCR has explicitly recognized that a university can determine the interests and abilities of both sexes through surveys or other means, and that a university can use these to demonstrate that it is currently meeting those skills and interests.[10] **OCR explicitly notes in its Investigators' Manual**

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[10] **Manual at 25.**

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that "*a survey is mentioned most often since it is usually the simplest method for the institution and OCR to determine interests and abilities*." Manual, p. 27 (emphasis added).[11]

In the Interim Title IX Intercollegiate Athletics Investigator's Manual issued in July 1980, OCR instructed its field investigators that one approach to determining the interests and abilities of students would be a combination of methods such as:

- a carefully designed survey (or other assessment device) of male and female students (either all undergraduates or a statistically valid sample);
- *a review of student admission applications to determine the high school athletic endeavors of applicants;*[12]
- a review of interscholastic sports participation of high school students in areas served by the institution (looking at both the male/female participation rates and the particular sports offered for each);
- a review of participation by both sexes in club sports; and
- analysis of general team performance over a period of time.

Interim Manual, p. 129. (emphasis added).

In its Draft Policy Interpretation, 43 Fed. Reg. 58070, dated December 11, 1978, OCR stated:

> Equalizing opportunities for men and women in athletics will not result in identical men's and women's athletics programs.
>
> The Title IX regulation does not require an equal number of men and women participants or an equal number of men's and women's sports. Rather, it requires that the interests and abilities of men and women be equally accommodated. In recent years, there has been a significant growth in the athletic interests and abilities of women.
>
> * * *
>
> An institution that does not choose to have the above procedures may, nevertheless, be satisfying the athletic interests and abilities of its female students. Such an institution should be able to demonstrate that it is doing so, for example:
>
> A. By showing that the club, intramural, and intercollegiate sports currently offered accommodate the interests and abilities of women by providing

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[11] Again, if any deference is given to OCR statements, deference must also be given to OCR's instructions to the field on how to access interests and abilities.

[12] Judge Pettine in *Brown* specifically rejected the concept of reviewing student admissions applications to determine the high school athletic endeavors of applicants even the OCR's first policy interpretation explicitly directs a factfinder to do so.

> **opportunities comparable to those of men at all levels (i.e. intramural, club and intercollegiate);**
>
> B. **By showing that there is at the institution a pattern of increased participation by women in athletic activities at all levels; or**
>
> C. **By showing that the institution's overall athletic program at all levels reflects the growth in the athletic interests and abilities of women evidenced in regional or area interscholastic programs.**

43 Fed. Reg. at 58074.

In its Final Policy Interpretation, OCR states that universities may use any method to determine athletic interests and abilities of students, provided they are nondiscriminatory and so long as:

> a. The processes take into account the nationally increasing levels of women's interests and abilities;
>
> b. The methods do not disadvantage the members of an underrepresented sex;
>
> c. The methods of determining ability take into account team performance records; and
>
> d. The methods are responsive to expressed interests of students capable of intercollegiate competition who are members of an underrepresented sex.

44 Fed. Reg. at 71,417.

OCR instructs its investigators to consider any surveys of interests and abilities done by the institution, to review whether the institution has failed to accommodate "expressed interest," and to review other programs indicative of interests and abilities, such as club and intramural sports; sports programs at "feeder" schools (i.e., high schools); community and regional sports programs, and physical education classes.[11]

a. Student Surveys to Measure Interest and Abilities

One of the most direct ways to determine student interest and abilities is to survey the current student population. The OCR has used student surveys to find that an institution is accommodating student interests and abilities and so should this court.

June 16, 1987 - Tennessee Technological University - Because the sports offerings for women had been based on interest assessed through a student survey, availability of competition and coaching, conference requirements and expense, the OCR found that the present program fully and effectively accommodated the interests and abilities of women despite an 18 point differential between enrollment and participation rates.

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[11] Manual, p. 25.

b. Club and Intramural Sport Participation as a Measure of Interest

According to the OCR, interest and participation in club and intramural sports are another measure of student interest and abilities. By way of example, assume a university has an intramural program through which students can participate in sports of their choosing in as many numbers as express an interest with very little limitation. Further assume the university has a student body enrollment that is 50:50 male:female but the intramural participation ratio is 65:35, male:female. Should the university be required to provide varsity opportunities at the 50:50 ratio or the 65:35 ratio? Both the OCR and common sense would point to the latter. Actual intramural and club participation rates are a better gauge of interests and abilities than general population statistics such as student body enrollment. According to a CFA survey, only 22.22% of the students participating in intramural sports are women.

The OCR has used precisely this sort of analysis in a number of its Letters of Finding:

June 16, 1987 -- Tennessee Technological University -- In finding that TTU effectively accommodated women's interests and abilities, OCR focused first on the fact that men constituted 66% of the participants in intramurals, more than the percentage of men in the student body. OCR also noted that there were women's varsity teams in the sports in which women participated at the intramural level.

February 28, 1990 -- University of Wisconsin, Madison -- The OCR looked at club and intramural sports participation, sports offerings at other Big 10 institutions, and interscholastic sports participation in Wisconsin high schools.

November 18, 1990 -- Furman University -- OCR found the university not to be in compliance based in part on intramural and club participation rates. Women's intramural soccer had 143 participants but there was no women's varsity team.

c. High School Participation Rates as a Measure of Interest and Abilities

Participation rates at the varsity level in college necessarily reflect the participation rates at the high school level. To achieve the experience and skill necessary for successful intercollegiate competition, for most sports, students must have participated at the high school level, if not the junior high or even elementary school levels. It is very difficult, if not, impossible, for a student to develop the ability to participate effectively the intercollegiate varsity level without such prior participation.

Recent national surveys over the past four years suggest that at the high school level, approximately 36 to 37.9 percent of the varsity athletes are female.[14] In the Cohen v. Brown University case, plaintiffs' expert, Professor Peter Marks, testified that it would be twenty years before young women would participate at the same rate as young men in high school sports.

d. Surveys of Feeder Schools as a Measure of Interest and Abilities

By looking at what sports and in what numbers women have participated at the high schools (both public and private) which feed the university, a university can gauge fairly well the pool of qualified athletes it will be able to draw to the university.

OCR has examined this factor as well:

April 3, 1992 -- Western Carolina University -- In finding that the university's current program equally effectively accommodated the interests and abilities of women students, OCR noted that the university is located in a rural area of North Carolina and most high schools in the area, which form the feeder group, are small, and, therefore, tend to offer fewer sports than larger metropolitan schools.

May 21, 1993 -- Auburn University -- In finding that Auburn was not effectively accommodating women's interests, particularly in soccer, OCR relied, in part, on statistics that showed increased high school soccer participation in the southern states. Interestingly, OCR rejected reliance solely on Alabama statistics despite the fact that most students came from Alabama because the coaches told OCR that they recruit nationally, and particularly in the 11 southern states.

OCR notes in its Policy Interpretation that the unique characteristics of sports, such as football, including the fact that they draw large numbers of spectators, have higher rates of injury, require more

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[14] National Federation of State High School Associations, 1994 Sports Participation Survey.

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participants, and necessitate extra expenditures and large budgets, must be considered. See 44 Fed. Reg. at 71416, 71419, 71422 and coaching support.

The OCR's Investigator's Manual also specifically notes that the sport of football, including the number of participants needed to field a team, the rate of injury, and the rate of severe injury, often justifies the assignment of several assistant coaches. Manual, p. 61. The bottom line is whether women's teams are able to engage in comparable competition based on the coaching support provided.

As the Ninth Circuit in Stanley v. University Southern California, 13 F.3d 1313, 1321 (9th Cir. 1994), noted, societal discrimination in preferring to witness men's sports cannot be attributed to the educational institution.

C) Plaintiffs Have Failed To Show That Intercollegiate Level Participation Opportunities For Male And Female Students Are Not Provided In Numbers Substantially Proportionate To Their Respective Enrollment

1. Plaintiffs In Brown And Other Cases Have Presented No Evidence As to What Are Participation Opportunities

The first prong of OCR's "effective accommodation" standard, the safe harbor provision for universities, asks whether the participation opportunities in intercollegiate athletics for male and female students are provided in numbers substantially proportionate to their respective enrollments. The courts focused solely on participation rates and ignored participation opportunities.[15]

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[15] That the use of the phrase "participation opportunities" is significant in the first prong and means something different from "participation rate" is verified by the fact that the Department of Education focuses on participation rates elsewhere in the regulations but specifically chose to use the phrase "participation opportunity" in section 106.41, which the OCR picked up in the first prong. Specifically, in section 106.37(c) of the regulations relating to Athletic scholarships, the Department of Education stated that universities must provide athletic scholarships in proportion to the number of students of each sex participating in intercollegiate athletics. In section 106.41(c), the Department of Education stated that a university must provide equal athletic opportunities.

If one does not give meaning to the differences between the phrases, one ignores the latin maxim "ut res magis valeat quam pereat," the rule of law that all language in a regulation has meaning. A court should give meaning to all words rather than providing an interpretation which makes a section or phrase meaningless.

And, the use of the phrase "participation opportunity" in the first prong makes sense. The focus should be on what the university is offering or providing in the way of participation opportunities, not who decides to accept the offer.

Participation rates are a function of opportunity, interest and ability. Even if the participation opportunities provided to men and women, that is the slots on existing teams available to interested and qualified students, are equal or proportionate to student body ratios, the participation rates may still not be equal or proportionate to student body ratios so long as men and women have different athletic interests and abilities. There will not be participation ratios (male: female) equal to the student body enrollment ratio unless and until men and women have equal interest and ability in participating. The courts have completely ignored the distinction between participation opportunities and participation rates and based their analyses totally on participation rates.

2. By Providing Opportunities Proportionate To Interests And Abilities, A University Is Clearly Satisfying Its Obligation To Accommodate Students' Interests And Abilities

In the Title IX Intercollegiate Athletics Investigator's Manual issued in July 1980, the OCR stated with respect to accommodation of student interests and abilities: "it requires institutions to meet the interests and abilities of women to the same degree as they meet the interests and abilities of men, by providing opportunities which address the interests and abilities of each sex equally." Manual, p. 122 (emphasis added). This is the proper focus: whether the interests and abilities of male and female athletes are satisfied to the same degree.[16] Plaintiffs' expert in Brown, Donna Lopiano, recognized this standard when she directed institutions to "determine the interests of both sexes in the sports to be offered by the institution," in her 1976 article entitled "A Fact-Finding Model for Conducting a Title IX Self-Evaluation Study in Athletic Programs."

This analysis is consistent with language in the 1990 Investigator's Manual which directs investigators to determine whether the program "equally effectively accommodates student interests and abilities:"

> The participation ratios are often not proportionate to the enrollment ratios for members of each sex, and a history of program expansion for the underrepresented sex may not be apparent, thus leading to the question of whether the current program equally effectively

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[16] A numeric example illustrates this standard. University ABC has a student body that is 50:50 male:female. There are 450 students with the interest and ability to participate in intercollegiate varsity sports: 300 men and 150 women. Applying the equally effective or same degree accommodation standard, a university would have to provide participation opportunities in the ratio of 2:1, male: female.

> **accommodates student interests and abilities**, step three of the analysis for competitive opportunities.

Manual, p. 25.

3. Two Standard Deviation Rule Applied By Plaintiffs Inappropriate

As Plaintiffs' expert in Brown, Dr. Gray, who submitted an affidavit in Colorado State case, wrote in an article entitled "Statistics and the Laws," the Supreme Court has applied a two to three standard deviation rule when evaluating the legal significance of statistical disparities. (Gray, Tr. 10/4/94, p. 52). See Hazelwood School District v. United States, 433 U.S. 299, 308-09 (1977); Castaneda v. Partida, 430 U.S. 482, 496-97 (1977). See also EEOC v. Federal Reserve Bank of Richmond, 698 F.2d 633, 647-48 (4th Cir. 1983) (courts should be extremely cautious in drawing any conclusions of legal significance from standard deviations in range of 1 to 3); Coates v. Johnson & Johnson, 756 F.2d 524, 527 n. 22 (7th Cir. 1985). (accord). The Court in Brown ignored the U.S. Supreme Court.

The Supreme Court emphasized in Int'l Brotherhood of Teamsters v. United States, 431 U.S. 324, 340, "statistics come in infinite variety and ... their usefulness depends on all the surrounding facts and circumstances." In the Brown case, Dr. Welch, a world renowned labor economist testified, the kind of probabilities relied upon by Dr. Gray assume that there is no issue of definition or measurement of participation. As the evidence in the Brown trial clearly demonstrated, there is no single definition or measure of participation. Rather, there is a range of measures of participation. Where there is no single reference point against which to make a comparison, a two standard deviation measure is particularly inappropriate; even a three standard deviation measure may not be appropriate. (Welch Tr. 11/23/94, pp. 56-59)

4. Universities Should Be Able To Satisfy The 80% Rule

Alternatively, a reasonable measure of "substantial proportionality" is the 80% rule used by other federal agencies in determining whether substantial equality is achieved. For instance, the Office of Federal Contract Compliance Programs instructs its investigators to use the 80% rule to determine whether an employer has "substantially" more or fewer minorities and/or women in particular job areas than would reasonably be expected by their representation in the workforce. See Federal Contract

Compliance Manual, §2NO3(e). See also, Easley v. Anheuser-Busch, 575 F.Supp. 402 (E.D. Mo. 1983) aff'd in relevant part, 758 F.2d 251 (8th Cir. 1985); Cox v. City of Chicago, 868 F.2d 217 (7th Cir. 1989).

5. Participation Opportunities Must Include Club Teams That Participate In Intercollegiate Competition

The policy interpretation specifically includes, for purposes of counting participation opportunities, club sports that regularly participate in varsity competition in its definition of intercollegiate athletics, 44 Fed. Reg. at 71413, N.1.

II. ANALYSES OF NATIONAL DATA, STUDIES AND SURVEYS THAT PROVE WOMEN ARE LESS INTERESTED AND PARTICIPATE IN LOWER PERCENTAGES THAN MEN IN TEAM SPORTS AND OTHER ATHLETIC ENDEAVORS FROM GRAD SCHOOL ON

A) Introduction

This section of the article looks at a variety of statistical issues derived primarily from national data bases and studies. These data definitely prove that relatively speaking women are less interested and qualified in athletics on an intercollegiate basis.

B) University Athletic Departments Cannot Respond To Constant Fluctuations In Either The Student Body Or Team Sizes

From a management perspective, it is very difficult, if not impossible, for a university to respond to constant fluctuations in student body enrollment and athletic participation over a short period of time, by continually adding or deleting men's or women's athletic teams. An Athletic Department cannot sit down one spring and say that the university will have X teams the next fall and then the next season, change it to Y. Planning must be longer term.

Nationally, the representation of women among varsity intercollegiate athletes is between 30 and 35%. NCAA Gender Equity Study.

This is consistent with national data. Specifically, N.C.A.A. Gender Equity Committee found that based on their data that fewer women are participating in matched sports nationally. Indeed, according to the Gender Equity Study in Division I, some 70-80 fewer women are participating in matched sports. Additionally, significantly fewer women are walking on to women's teams. Also, Donna Lopiano testified in the Brown case that men are more willing to be bench warmers than women. The College Football Association has reported that female participation rates in terms of walk-ons run about 20 to 40% lower than men's participation rates. (Neinas, Tr. 11/1/94, p. 117, 130-31).

C. Club and Intramural Sports

Nationally men are more likely to participate in intramural sports by a ratio of 4:1. Only 22.22% of the students participating in intramural sports according to the CFA survey are women. (Welch Tr. 11/22/94, p. 73; Neinas, Tr. 11/1/94, p. 125).

A 3:1 ratio in club sports means that men have greater interest in athletic participation than do women. (Neinas, Tr. 11/1/94, p. 60).[17]

D. Female High School Participation Rates Still Markedly Lower Than Male; This Translates to Fewer Women Available To Participate In Intercollegiate Varsity Athletics

The best predictor of whether a student is interested in participating in varsity athletics in college is whether they had athletic experience in high school. (Welch, Tr. 11/22/94, pp. 45-46).[18] Nationally, high school participation rates remain far below men's. There was a marked increase in female participation in the 1970s and 1980s but the increase has levelled off. According to the National Federation of State High School Associations, in 1993-1994, 2,124,755 or 37.9% of the high school students participating in athletics were girls and 3,478,530 or 62.1% were boys. (Welch Table 46; Welch, Tr. 11/23/94, p. 93).

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[17] Nationally, far more men than women participate in clubs sports. According to a survey conducted by the College Football Association, only 34.29% of the students participating in club sports are women. (Welch Table 16A; Welch Tr. 11/22/94 P.M. p. 73). In other words, the men participating in club sports outnumber women by a ratio of 2:1. (Neinas, Tr. 11/1/94, p. 123).

[18] Of the survey respondents to a survey of 500 Brown undergraduates who indicated that they had had no high school varsity experience, only 8% of the men indicated that they have or they plan to participate in varsity sports at Brown while only 2.8% of the women without high school experience indicated that they had or would participate in college. However, of the women who had had varsity experience in high school, nearly 30% of them indicated that they had or intended to participate in varsity athletics while at Brown. So a woman with varsity experience in high school is 10 times as likely to participate at Brown as a women without high school varsity experience. For men, they are about four-and-a-half times as likely. (Welch Table 14, Welch Tr. 11/22/94, pp. 51-52).

1. Female Participation Rates Drop Markedly During High School, Resulting in Fewer Women With The Interest and Ability To Participate In Intercollegiate Athletics

We have found that participation rates of girls drop as girls go from junior high to high school and then to college in marked numbers. From the National Education Longitudinal Study of 1988, We found that 56.8% of the female eighth graders surveyed reported being a member of a varsity or intramural team, while 45.1% of female high school sophomores so reported and only 32% of female high school seniors so reported. (Welch Tr. 11/23/94, p. 77).

Dr. Donald Sabo, Plaintiffs' expert in Brown, confirmed these findings. He testified that in a study he did with the Women's Sports Foundation entitled "The Wilson Report: Moms, Dads, Daughters and Sports," he found that there is an increase in attrition from sports when girls reach 12, 13, and 14 years of age. He found that 87% of girls 7-10 are involved in some fitness activities but that percentage decreases to 75% in 15-18 year olds. (Sabo, Tr. 12/6/94, pp. 124-125). "The girls are opting out of athletics in order to pursue other kinds of interests." (Sabo, Tr. 12/6/94, p. 125). In the report, he went on to note that "But most importantly, other interests (88%) -- primarily interest in boys (39% overall and 47% of older girls) -- pull girls, especially high school girls, off the playing field)." Tables in the report show the following as reasons why girls drop out of sports:

Interested in other things	88%
Got tired of it - it was boring	58%
More interested in boys	39%
Too hard to get to activity	31%
Sport no longer offered	30%
Didn't have enough money	26%
Didn't have enough time	59%
Got a job	19%
Felt wasn't good enough	49%
Got hurt/didn't want to get hurt	39%
Too old	20%
Didn't want boys to see me play sports	16%
Sports aren't good for girls	12%
Sports aren't ladylike/feminine	10%
Friends don't play	33%
Friends, family, or others discouraged me	15%

In another report, Dr. Sabo found that the percentage of women who participate in athletics drops from 51 percent in youth to 9 percent through college for working women. (Sabo, Tr. 12/6/94,

p. 119). Finally, in a report on "Minorities in Sports," Dr. Sabo and his colleagues found that four years after high school, men who had participated in high school sports were more likely than women still to be participating. Table 14 of his report shows that only 34% of Hispanic women who were athletes in high school were still participating compared to 48% of the Hispanic men; 32% of black females versus 53% of black males; 48% of white females versus 59% white males. (Sabo, Tr. 12/6/94, pp. 72-77)

In this study there are numerous non-discriminatory reasons why young women drop out of high school sport. For instance, the Sabo studies noted reasons such as boys', school work and things of that nature.

The representation of women among varsity athletes at most universities is consistent with the representation of women among the students who earned varsity letters in high school. (Welch Tr. 11/23/94, pp. 70-72). A university has no control over participation rates at its feeder schools. It can only provide opportunities to those who have the interest and ability to participate based, in part, on prior high school experience. The fact that the representation of women among varsity athletes corresponds to the representation of women among the students who had high school participation again shows that nationally universities on average are meeting the interests and abilities of it female student athletes.

E. The Difference In Rates Of Interest In Participating In Intercollegiate Athletics Between Men And Women Is Confirmed By National Data

Numerous national surveys confirm that men and women are different in their athletic participation and in their athletic interest. (Welch, Tr. 11/22/94, p. 39). Indeed, the N.C.A.A. Gender Equity Committee found that women across the country are not participating at the same rate as men and are not using all of the opportunities available to them. (Welch, Tr. 11/23/94, p. 75).

1. NELS DATA

Data from the National Educational Longitudinal Study of 1988 which tracked students who were in the 8th grade in 1988 through 1992 when they were high school seniors, show that of students who expected to attend college, were in the top quartile of their classes and had been a member of a varsity or intramural team, 42.2% were women. Of those who had been a member only of a varsity team, 42.8% were women. (Welch, Tr. 11/23/94, p. 76).

2. High School and Beyond

Data from the High School and Beyond database again demonstrates that women are less likely to participate in varsity athletics at the intercollegiate level than are men. For instance, for the group that were seniors in 1980, who expected to attend a private four year college and were members of a varsity team, 38.4% were women. For the college bound sophomores in 1980 who were members of a varsity team, the representation of women was 38.7%. (Welch, Tr. 11/23/94, pp. 80-81).

3. NLS-72

The National Longitudinal Study of 1972 conducted under the auspices of the U.S. Department of Education's National Center for Education Statistics shows that among college-bound high school seniors in 1972, about 35 percent of respondents participating in sports were women. (Welch, Tr. 11/23/94, pp. 83-84).

4. CIRP Annual Freshman Survey

The national data from the CIRP survey conducted at U.C.L.A. shows that between 32 and 36 percent of university freshmen who devoted 16+ hours per week to exercise or sports were women. (Welch Tr. 11/23/94, pp. 85-86). The survey further shows that between 43 and 45 percent of university freshmen who won letters their senior year of high school were women. (Welch Tr. 11/23/94, p. 87). Finally, the survey shows that between 35 and 40 percent of university freshmen expecting to participate in varsity sports were women. (Welch, Tr. 11/23/94, pp. 47-48).

Another study done by the Cooperative Institutional Research Program (CIRP) confirms the disparity in interest level between men and women. CIRP is a national longitudinal survey of the American higher education system. Each year freshmen students at a number of colleges are surveyed about their activities, plans, objectives, and priorities. "The American Freshman: National Norms for Fall 1993," is the latest report from the annual survey of college freshman. An important result of this survey is the difference in the percentage of males and females who expect to play varsity sports.

Among freshman at highly selective private universities in 1993, 20.9% of the men and 14.3% of the women estimated chances were "very good" that they would be varsity athletes.

5. Monitoring the Future

An annual, national sample of college freshman conducted by the University of Michigan's Institute for Social Research, reveals that between 35 percent and 41 percent of high school seniors who participate in sports almost every day are women. (Welch Tr. 11/23/94, pp. 88-89)

This survey, entitled "Monitoring the Future: A Continuing Study of the Lifestyles and Values of Youth," conducted by the Institute for Social Research at the University of Michigan yields similar results. The survey quantifies the percentages of boys and girls (high school seniors) who participate in sports on a daily basis. In 1988, 56.3% of boys indicate they participate in sports almost every day while only 36.2% of the girls indicate that they participate almost every day. The participation rates for students who say they will definitely graduate from a four-year college are somewhat higher, but the gap between male and female participation rates it still very wide.[8]

6. National Health Interview Survey

According the National Health Interview Survey, conducted annually under the auspices of the National Center for Health Statistics, women represent about 42 percent of the people age 18 to 21 who exercise or play sports regularly. (Welch, Tr. 11/23/94, pp. 94-95)

7. Centers for Disease Control; Boys Outnumber Girls in Sports 3:1

The Centers for Disease Control and Prevention recently issued a new study which shows that among high school students, boys are more likely than girls to engage in vigorous exercise for 20 minutes three times a week, by a ratio of 3:1. The CDC further found that a significant number of girls drop out of sports participation between grades 9 and 12. This confirms studies done by Dr. Sabo, Plaintiffs' expert. (Welch, Tr. 11/23/94, pp. 90-91)

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[8] Similarly, a survey conducted by the U.S. Department of Education's National Center for Educational Statistics, "the National Educational Longitudinal Survey of 1988, shows substantial disparities between male and female participation rates in high school.

8. NCAA Data

According to the NCAA's 1992-1993 Annual Report, the average number of women's sports at all institutions nationwide is 7.3. At Division I schools, the average number is slightly higher, at 8.3 per institution. According to a 1990 survey of Women in Intercollegiate Sport, conducted by R. Vivian Acosta and Linda Jean Carpenter of Brooklyn College, the average number of sports offered for women per institution nationwide is 7.24.

Sport	Number of Schools in East Division I with Teams	% of Schools
Basketball	75	100%
Tennis	73	97%
Cross Country	72	96%
Volleyball	66	88%
Outdoor Track	63	84%
Indoor Track	63	84%
Swimming	59	78%
Softball	58	77%
Soccer	52	69%
Field Hockey	44	59%
Lacrosse	31	41%
Gymnastics	19	25%
Crew	18	24%
Fencing	15	20%
Golf	10	13%
Ice Hockey	8	11%
Skiing	6	8%
Squash	5	7%

Source: NCAA 1992-1993 Annual Report, pp. 34-35

9. Miscellaneous Studies

For instance, if one looks at the sports offered to young women in the public and private high schools in eight northeastern states from which a substantial proportion of Brown's students come, one finds that there are only ten sports offered by 20 percent or more of the schools. They are:

Basketball
Softball
Track
Volleyball
Tennis
Soccer
Field Hockey
Cross Country
Swimming
Golf

Source: National Coaches Association. Similar data exists on a national basis.

There exists an extensive literature in the field of sports psychology linking individuals' attitudes to their frequency and type of participation. The empirical work in this area largely builds upon the pioneering work of Gerald S. Kenyon. In 1968, Dr. Kenyon published two articles describing his construction and preliminary use of the Attitudes Toward Physical Activity Questionnaire (ATPA).

Based on samples of undergraduate college students, Dr. Kenyon identified six categories of interest that characterized some of the reasons that individuals participate in physical activities, including organized sports. The six categories are:

1. Social Experience
2. Health and Fitness
3. Pursuit of Vertigo
4. Aesthetic Experience
5. Catharsis
6. Ascetic Experience

Dr. Kenyon's preliminary work indicated that there were gender differences in the relative importance of his six factors. Dr. Kenyon's approach and questionnaire have been extended and applied to samples from numerous different populations. The results of the subsequent studies have shown a consistent pattern.

Among college students with the same participation frequency (e.g., daily or once per week), men attach a higher priority to winning than do women. As recently as this year, a study of college men and women concluded that competition is statistically significantly more important to men as a motivation for participating in athletics while college women are more likely than men to view exercise as a means to become and stay physically fit. Rather, the studies to date merely indicate that men and women differ on average and that the attitudes that are more typical of men are also those that are more typical of individuals who choose to participate in formal sports programs.[19]

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[19] The following bibliography lists articles that reflect these conclusions:

Apgar, Fred M., "Emphasis Placed on Winning in Athletics by Male High School Athletes," The Research Quarterly, Vol. 48, No. 2, pp. 253-259.

Brown, Barbara, B. Gail Frankel, and Marilyn P. Fennell, "Hugs or Shrugs: Parental and Peer Influence on Continuity of Involvement in Sport by Female Adolescents," Sex Roles, Vol. 20, Nos. 7/8, 1989.

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III. ANALYSIS OF BROWN UNIVERSITY DATA

A) Introduction

No university in America has done more to identify the interest and abilities of its student body and applicants than Brown University. Also, Brown has closely scrutinized its present women's athletic program that consists of fifteen university-funded teams, three donor-funded teams and three club teams that participate in intercollegiate competition. The Brown analysis of these teams shows unequivocally that there are upwards of one hundred participation opportunities that are not being

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Finkenberg, Mel E., James M. DiNucci, Sandra L. McCune, and E. Donice McCune, "Analysis of Course Type, Gender, and Personal Incentives to Exercise," Perception and Motor Skills, 1994, 78, pp. 155-159

Gill, Diane L., David A. Dzewaltowski and Thomas E. Deeter, "The Relationship of Competitiveness and Achievement Orientation to Participation in Sport and Nonsport Activities," Journal of Sport and Exercise Psychology, 1988, 10, pp. 139-150

Kenyon, Gerald S., "Six Scales for Assessing Attitude Toward Physical Activity," Research Quarterly, Vol. 39, No. 3, 1968

Kenyon, Gerald S., "A Conceptual Model for Characterizing Physical Activity," Research Quarterly, 1968

Kidd, Thomas R., and William F. Woodman, "Sex and Orientation Toward Winning in Sport," The Research Quarterly, Vol. 46, No. 4, 1975

Klieber, Douglas A. and Joan D. Hemmer, "Sex Differences in the Relationship of Locus of Control and Recreational Sport Participation," Sex Roles, Vol. 7, No. 8, 1981

Lever, Janet, "Sex Differences in the Games Children Play,"
23 Social Problems, pp. 478-487

Maloney, T. Lawrence and Brian M. Petrie, "Professionalization of Attitude Toward Play Among Canadian School Pupils as a Function of Sex, Grade and Athletic Participation," Journal of Leisure Research, 1972, 4 (summer): 184-195

Mathese, Sharon Ann and Robert Battista, "College Men's and Women's Motives for Participation in Physical Activity," Perceptual and Motor Skills, 1985, 61, 719-726

Sage, George H., "Orientations Toward Sport of Male and Female Intercollegiate Athletes," Journal of Sport Psychology, 1980, 2, 355-362

Snyder, Eldon E. and Elmer A. Spreitzer, "Family Influence and Involvement in Sports," The Research Quarterly, Vol. 44, No. 3, 1973

Klieber, Douglas A. and Joan D. Henmer, "Sex Differences in the Relationship of Locus of Control and Recreational Sport Participation," Sex Roles, Vol. 7, No. 8, 1981

taken advantage of by women at Brown. Also, it was uncontroverted that whether one looked at applicants, admitees or matriculants that relative interest in sports was significantly less for women than men.

B) **Analysis of the Applicant Pool at Brown**

One measure of Brown student interest in athletics is the interest expressed at time of application to Brown. Specifically, each applicant is asked to indicate on his or her application form whether he/she is interested in pursuing sports at Brown and if so, in which sports.

Brown has retrieved this data for the classes of 1994 through 1998. It reveals the following:

Class of 1994:

Applicants: 7618 expressed interest in sports
4360 (57.23%) Men/ 3258 (42.77%)Women
Admits[21]: 1811 expressed interest in sports
1039(57.37%) Men/ 772 (42.63%)Women
Commits[22]: 898 expressed interest in sports
502(55.90%) Men/396 (44.10%)Women

Class of 1995:

Applicants: 7473 expressed interest in sports
4473 (59.86%) Men/ 3000 (40.14%)Women
Admits: 1787 expressed interest in sports
1005 (56.24%) Men/ 782 (43.76%)Women
Commits: 926 expressed interest in sports
516 (55.72%) Men/410 (44.28%)Women

Class of 1996:

Applicants: 6877 expressed interest in sports

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[21] The Brown data base is the most thorough evidence that has been submitted in any Title IX trial to date.

[22] Refers to applicants admitted and matriculated.

4007(58.27%) Men/ 2870 (41.73%)Women

Admits: 1691 expressed interest in sports

915 (54.11%) Men/ 776(45.89%)Women

Commits: 824 expressed interest in sports

446 (54.13%) Men/378 (45.87%) Women

Class of 1997:

Applicants: 6922 expressed interest in sports

3959 (57.19%) Men/ 2963 (42.81%)Women

Admits: 1843 expressed interest in sports

991 (53.77%) Men/ 852 (46.23%)Women

Commits: 875 expressed interest in sports

483(55.20%) Men/ 392 (44.80%)Women

Class of 1998:

Applicants: 6862 expressed interest in sports

3848 (56.08%) Men/3014 (43.92%)Women

Admits: 1467 expressed interest in sports

795 (54.19%) Men/ 672 (45.81%)Women

Commits: 731 expressed interest in sports

394(53.90%) Men/337 (46.10%)Women

The data also show that Brown was offering intercollegiate opportunities in all of the sports for which the female applicants who had matriculated expressed an interest in any substantial numbers and for which there is intercollegiate competition available.

C) National College Board Data Show Greater Athletic Interest and Prior Participation by Prospective Male Applicants Than Female Applicants

Students who take the SAT also complete a questionnaire (SDQ) which they can have sent to the schools to which they plan to apply. Question 31 of the SDQ instructs respondents to identify any extracurricular activities in which they plan to participate during college. One of the activities on the list is varsity sports. The SAT data show that of the students who had their SDQs sent to Brown and all universities and who indicated that they planned to participate in varsity sports, more were men than women. Specifically, only 38 to 39 percent of the respondents who so indicated were women. (Welch Tr. 11/22/94).

In addition to interest in athletics, applicants to Brown and other universities are also asked about their interest in participating in other activities. When one looks at the gender composition of those interested in other activities, one finds gender differences. Thus, for instance, of those applicants expressing an interest in dance, between 89 and 94% of them are women. Of the applicants expressing an interest in drama, 55 to 64% of them are women. Finally, of the applicants expressing an interest in music, 55 to 72% of them are women. (Welch, Tr. 11/22/94 P.M., pp. 72-73).

The College Board data further show that a higher percentage of men than women participate in varsity sports in high school. (Welch Table 8A; Welch Tr. 11/22/94 P.M., p. 37). (Welch, Tr. 11/22/94 P.M., p. 38). Finally, the data show that more men have participated in high school sports that are NCAA sports. (Welch Tr. 11/22/94 P.M. p. 38)

D) CIRP Data Show Greater Athletic Interest Among Men Than Women

The Cooperative Institutional Research Program (CIRP) at UCLA conducts an annual survey of college freshman on a number of topics including athletic participation. Data from Brown's most recent submissions to CIRP and nationally are consistent with the admissions and SAT data, showing that more men than women plan to participate in varsity athletics while in college and have past varsity experience. Of the students in the Class of 1996 at Brown, (freshman in 1992) that thought the chances were very good that they would play varsity athletics in college, only 41.45% were women of the respondents in the Class of 1992 who had won a varsity letter in their senior year of high school, 41% were women. Finally, of the students who were devoting 16 plus hours per week to sports or exercise, only 33-35% of them are women. (Welch, Tr. 11/22/94, pp. 39-41).

E) 1993 Survey

In April 1993, an outside, independent company conducted a telephone survey of 500 randomly selected Brown undergraduates (a statistically significant sample), inquiring into their interest in and past and current participation in athletics.[23] The 500 respondents were evenly divided by sex: 254 (50.8%) male and 246 (49.2%) female. The survey results reveal that Brown is offering intercollegiate participation opportunities to female student athletes in excess of their representation in the pool of interested, qualified students. The following is a summary of the key results:

- There exists a statistically significant differential between the percentage of men who participated in high school athletics and the percentage of women who participated in high school athletics, a differential exceeding 4 standard deviations.
- 75.59 percent (± 5.28) of men at Brown and 56.10 percent(± 6.20) of women at Brown had varsity experience in high school.
- Men at Brown have had more years of high school varsity experience than women: 2.65 (± .21) years v. 1.96 (± .23) years.
- Men are more likely than women to have received varsity letters or athletic honors in high school.
- The differential between the percentage of men and the percentage of women who received varsity letter in high school is statistically significant, exceeding 3 standard deviations.
- Men are more likely to have participated in club sports while in high school than women: 39.92% (± 6.02) v. 23.97% (± 5.33) of women.
- The differential between the percentage of men and the percentage of women who participated in club sports in high school is statistically significant, exceeding 3 standard deviations.
- Men are substantially more likely than women to participate in intramurals at Brown.
- The differential between the percentage of men and the percentage of women who participate in intramurals at Brown is statistically significant, exceeding 4 standard deviations.

(Welch, Tr. 11/22/94 P.M., pp. 43-45, 49-50, 65-67).

When the participation rates within gender are translated into relative participation rates and normed to the student body enrollment ratios for 1993-1994 and 1994-1995, one finds that the survey verifies the findings made from the admissions data, the SAT data and the CIRP data. The data show that women account for less than 45 percent of Brown students with high school varsity experience and honors:

- Of the survey respondents who participated in varsity sports in high school, 42.93%-43.47% of them were women.

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[23] The survey was conducted by Group Seven Associates, a market and opinion research company based in Austin, Texas. The results of this survey was offered in evidence at trial.

- Of the survey respondents who lettered in varsity sports in high school, 44.21-44.76% of them were women.
- Of the survey respondents who received all league, all state or other recognition in high school, 42.11 to 42.65% of them were women.
- Of the survey respondents who participated in club sports while in high school, 37.54 to 38.06% of them were women.
- Of the survey respondents who participate in intramurals at Brown, 24.21 to 24.61% of them were women.

(Welch Table 13B; Welch, Tr. 11/22/94 P.M., pp. 50-51).

F) Brown Offered Dozens of Athletic Participation Opportunities to Women That Were Not Being Filled

Participation opportunities are the slots on an intercollegiate athletic team that the university offers to interested and able students. (Welch, Tr. 11/23/94, p. 115)[24] Opportunities may be provided by the university for which there are no interested or able athletes to fill in a given year. Thus, the number of actual participants on a team in a given year may not, and in fact, do not accurately measure the number of opportunities provided by the University.

Opportunities can be measured in a variety of ways. Opportunities can be measured by looking at the capacity of the team based on "potential" as defined by the coaches, by looking at the history of a particular sport and how many players each team has had in the past, by looking at matched men's and women's teams, and by looking at travel squad sizes and comparing them with actual squad sizes. Under any of the possible measures, it is clear that there are numerous opportunities on women's teams at Brown, as well as all universities, that are going unfilled.[25]

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[24] Scrimmaging is a critical part of a team's practice and requires having at least two full teams. (Roach Tr. 10/31/94, p. 63). However, the experts agree that the teams can and should be larger than that. Christine Grant, Plaintiffs' expert, testified that the natural limit on a team's size is 2.5 to 3 times the playing team plus depth. (Grant, Tr. 10/26/92, p. 23; Tr. 10/27/92, pp. 80-81). David Roach, Brown's Athletic director, testified that teams should have up to three times the number of players as are on the field at any one time. (Roach, Tr. 10/31/94, p. 82). Charles Neinas, Executive Director of the CFA, testified that a team needs to be at least double the size of the playing team plus depth. (Neinas, Tr. 11/1/94, p. 79). Grant Teaff, Executive Director of AFCA testified that a sport needs three individuals per individual playing the sport. (Teaff, Tr. 11/17/94, p. 63). Therefore, softball should have 27 players; volleyball, 18; soccer, 33 and the like.

[25] Additionally, there are upwards of 2800 female students who at the time of application expressed an interest in sports. (Welch Tables 30A-30D). If these women came out for and remained on existing teams, these opportunities could easily be filled. Alternatively, these women

1. Women's Teams Are Not Reaching Capacity As Defined By Coaches

The coaches of the women's university-funded teams at Brown uniformly testified as to how many players they could each have on their respective teams, that is the maximum capacity given present resources. When these numbers are compared with actual squad sizes for 1994-1995, it is clear that there are at least 78 women's opportunities going unfilled based on what the coaches believe the teams can support. If these opportunities were filled in 1994-1995, women would account for 48.8% of the athletes on university-funded teams, well within even the two standard deviation measure applied by Plaintiffs.

2. Women's Teams Are Not Reaching Capacity as Measured By Past History

The difference between the largest size a team has been and its actual size in '93-94 represents participation opportunities that went unfilled. In 1993-1994, there were approximately 101 participation opportunities (409 opportunities minus 308 participants) offered by Brown to women student athletes that were not utilized. This reflects demonstrated capacity and opportunities on existing teams. (Welch Tr. 11/23/94, p. 13).[26] Had the women's squads been at their maximum over the previous four years in 1993-1994, women would have accounted for 48.4% of athletes on university-funded teams and 46% of all athletes.[27]

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misrepresented their interest on their applications.

[26] A university is clearly better off filling the opportunities on existing teams rather than adding new teams.

[27] Dr. Welch conducted a similar analysis looking at the previous eight years and counting track only one time. He found that had the women's squads been at their maximum over the previous eight years, female representation would have been 48.24% for university funded teams and 45.55% for all athletes. (Welch Table 19; Welch Tr. 11/23/94, pp. 11-22).

3. Women's Teams Are Not Reaching Capacity As Measured by Matched Team Comparisons

Nearly all of the coaches that testified were in agreement that, with the possible exception of lacrosse, the men's and women's teams of matched sports, can be and should be the same size.[28] Looking at matched teams, one again finds that in 1993-1994, there was excess capacity on the women's university and donor-funded teams that was not utilized; specifically there were 85 opportunities that went unfilled in 1993-1994 based on matched team comparisons.[29] Welch Tr. 11/23/94, pp. 35). The addition of 85 more women would have brought the representation of women among athletes to well within two standard deviations of the student body enrollment in 1993-1994. The same is again true in 1994-1995; based on the squad sizes testified to by the coaches, there are 84 opportunities on women's teams that are going unfilled.

4. Women's Teams Not Even Reaching Capacity as Measured by Travel Squad Limits, an Objective, Consistent Measure of Opportunity

Brown University is subject to the Ivy League's rules on travel squad size. For each team, men's or women's, there is an established travel squad size. For matched teams, with the exception of lacrosse, the men's and women's travel squad sizes are exactly the same. There is no reason, other than different interests and abilities, why the men's and women's teams should not equal or exceed the travel squad limits in size. Yet, all of the men's teams, except swimming, exceed the travel squad in size in 1994-1995, while only the women's crew, cross country, field hockey, soccer, and squash teams exceed the travel squad size.[30]

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[28] Women's crew (Murphy, Tr. 12/7/94, p. 50); women's soccer (Pincince, Tr. 12/7/94, p. 182; Adair, Tr. 12/8/94, p. 13); women's basketball (Dobbs, Tr. 12/8/94, pp. 58-59); women's ice hockey (Gaudet, Tr. 12/8/94, p. 25);women's baseball (Almon, Tr. 12/8/94, p. 46); women's tennis (Taylor, Tr. 12/2/94, p. 200; Woods, Tr. 12/8/94, p. 109); women's track and cross country (Rothenberg, Tr. 12/1/94, pp. 173, 178-185-186). Even Donna Lopiano, Plaintiff's rebuttal expert, testified that men's and women's basketball, cross country, track, swimming and dive, soccer, and tennis teams could be the same size. (Lopiano, Tr. 12/2/94, pp. 40, 44-48).

[29] If one subtracts out the additional opportunities on women's softball, ice hockey and lacrosse, the teams about which there was any dispute over their comparability to the men's teams, one is left with 53 additional opportunities. If these opportunities had been filled, the female participation rate on university-funded teams would have risen to 46.8% in 1993-1994, well within the two to three standard deviations required by Hazelwood.

[30] In 1993-1994, all of the men's teams equalled or exceeded the travel squad size. (Welch Table 24; Welch Tr. 11/23/94, p. 22-23).

If one compares actual team sizes in 1994-1995 with the travel squad size, one finds a difference of at least 21 slots, slots that are available on the travel squad which are going unfilled on the women's teams. The cumulative deficit between the actual squad sizes in 1993-1994 as reported on the NCAA sponsorship forms and the travel squad sizes was 32. (Welch Tr. 11/23/94, pp. 20-21).

If the squads in 1994-1995 were increased to travel squad size, the representation of women would increase to 43.4% of all varsity athletes and 44.9% of athletes on university-funded teams. Similarly, if the women's squads in 1993-1994 had been increased to travel squad size, the representation of women would have been 41.03% of all varsity athletes and 44.22% of university-funded varsity athletes. (Welch, Tr. 11/23/94, pp. 23-25; Tr. 11/29/94, p. 14).

G) **461 Measures Show That A Higher Percentage of Men Than Women Are Interested In And Participate In Intercollegiate Athletics At Brown**

A higher percentage of men than women are interested in and able to participate in varsity athletics at Brown University. (Welch Tr. 11/22/94, p. 38). Brown presented 461 different calculations of interest at Brown and nationally, none of which were refuted by Plaintiffs[11] and all of which were consistent with one another. These measures show that Brown's participation opportunities exceed its own students' expressed interests and abilities, and the national interest rates.

1 **Admissions Data Show Greater Athletic Interest Among Male Applicants Than Female Applicants**

The admissions office maintains a computerized database on its applicants. In completing their applications, applicants are asked to identify their interest in sports; this information is coded onto a computerized database.[12] For the Classes of 1994 through 1998, the proportion of men who expressed an interest in participating in sports at the time of application consistently exceeded the proportion of women who have expressed interest. (Welch Table 1, Welch Tr. 11/22/94 A.M., pp. 70-71). Indeed, the difference is statistically significant. (Welch Tr. 11/22/94 A.M., p. 74).[33] As a result, women constitute less than 50% of the applicants who expressed interest in participating in athletics. Specifically, when the numbers are normed to the 1994-1995 student body composition, they show that women constitute between 42 and 45 percent of the applicants who expressed interest in participating in sports. (Welch Table 2; Welch, Tr. 11/22/94, a.m., pp. 76-80).

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[11] Even Christine Grant and Donna Lopiano, Plaintiffs' experts, acknowledged that more men than women have the ability to participate at the intercollegiate varsity level. (Grant, Tr. 10/27/92, p. 69; Lopiano, Tr. 12/2/94, p. 67).

[12] Dr. Welch verified the accuracy of the computerized admissions database by several methods. First, he compared the hard copies of the applications of 50 randomly selected students in each of the five classes against the coded, computerized data he had received. Although he identified 13 possible coding errors among the 250 applicants, the errors had the effect of overstating women's interests. (Welch Table 2A, Welch, Tr. 11/22/94 P.M., p. 31). Second, he conducted an internal consistency verification by checking to determine whether the athletes designated as coaches' finalists had identified their interest in that sport; 95% of them had. (Welch Table 10; Welch, Tr. 11/22/94 P.M., p. 29). Dr. Welch engaged in other data verification which confirmed that female athletic interest is not underrepresented in the data as the result of any coding errors by looking at 6000 applications. (Welch, Tr. 11/22/94 P.M., pp. 32-33). Finally, he concluded that the consistency between the

H) Plaintiffs Failed To Account For All Intercollegiate Participation Opportunities Offered To Women; Therefore, Their Analysis Is Fatally Flawed

Plaintiffs in Brown and their expert Dr. Gray focused solely on the university-funded and donor-funded sports offered by Brown and ignored in their counts, athletes who participate on teams that regularly engage in intercollegiate competition, that is the athletes who participate on the co-ed and women's sailing teams, the women's water polo team and the women's club soccer team. Each of these teams regularly engage in intercollegiate competition at the varsity level. (Ward, Tr. 12/8/94, pp. 133-134, 139).

According to the OCR's policy interpretation, intercollegiate competition includes club teams that compete at the varsity level. Specifically, footnote one of the Policy Interpretation provides:

> The regulation specifically refers to club sports separately from intercollegiate athletics. Accordingly, under this Policy Interpretation, club teams will not be considered to be intercollegiate teams except in those instances where they regularly participate in varsity competition.

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admissions data, the College Board and the CIRP data lends further validity to the admissions data. (Welch, Tr. 11/22/94 P.M., pp. 33-41). Indeed, the fact that the admissions data shows a female interest rate 3 to 5 points higher than the CIRP data suggests that the admissions data overstates female athletic interest. Interest may also be coded in the absence of self-identification if the applicant indicates elsewhere on his or her application that she is particularly talented in a sport, participated in high school sports, or if the talent becomes apparent when the applicant is before the admissions committee. Plaintiffs submitted no evidence to rebut Dr. Welch's analysis of interest or to show that there was any error in the admissions data that was other than random error or that lead to the undercount of female interest.

[33] Also, if one looks at statistics regarding degrees conferred in different fields of major, one finds that the representation of women varies widely among academic disciplines. (Welch, Tr. 11/23/94, pp. 95-96).

Federal Register 71413, n.1 (December 11, 1979). By deliberately failing to count the female athletes who participate on club teams that regularly compete at a varsity level, Plaintiffs artificially deflate the female participation rate, thereby misleading this Court. When these additional participants are taken into account, one finds that in 1994-1995 women constitute 44.8% of the students participating in intercollegiate athletics at Brown. These numbers must be counted for purposes of participation opportunities.

I) Plaintiffs Ignore Fluctuations In Student Body Enrollment

The gender composition of Brown's undergraduate population shifted by 5 and 1/2 percent in the past four years, from 45.6% female in 1989-1990 to 51.5% female in 1993-1994. Dr. Gray acknowledged on cross-examination that she would expect the student body to be constantly changing. (Gray Tr. 10/4/94, p. 74). Nevertheless, her analysis is based on a single, snapshot measure of the student body enrollment. (Ex. 91).

Plaintiff's approach leads to the conclusion that universities must adjust athletic offerings annually in response to fluctuating student body ratios. Such a result is absurd and would create impossible administrative problems for athletic departments throughout the country. The more appropriate approach would be to compare participation opportunities with student body enrollment over the course of several years.

J) Defendants In Brown Provided Extensive Evidence Of Unfilled Opportunities Being Offered To Female Student Athletes

To bring the projected '94-'95 participation rates on university-funded teams to within 2 standard deviations of the student body enrollment, Dr. Welch estimated that there would have to be 72 to 77 more women participating. (Ex. JJJJJ; Welch, Tr. 11/22/94 P.M., pp. 3-7; Welch, Tr. 11/23/94, p. 35). At 3 standard deviations which has been accepted by the U.S. Supreme Court in Castaneda and Hazelwood, he found 49 more female athletes would be needed. (Welch Tr. 11/22/94 P.M., p. 7).[34]

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[34] Applying the same analysis to the 1993-1994 N.C.A.A. sponsorship lists data, Dr. Welch concluded that Brown would have needed 72 more women or 74 fewer men to have met the two standard deviation test or 46 more women or 50 fewer men to satisfy the three standard deviation test. (Welch Tr. 11/22/94, P.M., pp. 9-10).

Defendants demonstrated at trial that there are upwards of 75 to 100 participation opportunities that exist on women's teams that are not being filled based on past capacity and coaches' own testimony about what is team capacity. It is clear, therefore, that Brown is offering participation opportunities substantially proportionate to student body enrollment even by the two standard deviation measure, let alone the three standard deviation measure.

Dr. Welch conducted several hundred comparisons of interest and participation rates and opportunities in 1993-1994 and anticipated participation rates in 1994-1995. Based on the more than 240 comparisons he did using 1993-1994 participation data, he found that in more than 90% of the cases there was no statistically significant difference between the measure of participation and the interests and abilities of Brown's students. Using the 1994-1995 data, he found there was no statistically significant disparity between actual participation rates and the interests and abilities of Brown students. Plaintiffs have done none of these analyses and would prefer to ignore them.

IV. CONCLUSION

In sum, the courts have consistently failed to recognize the obvious as it relates to Title IX. All the evidence, and it is totally uncontroverted, shows that women relatively speaking are less interested than men in participation in intercollegiate sports. The OCR has recognized this phenomena, where the courts have not. Any objective trier of fact must decide that he or she should not give deference to the shifting positions of OCR. However, if a court does grant deference then it must look at which is a "participation opportunity," what is "substantially proportional" and how does OCR mandate determining interest. If a court does that, it must find universities such as Brown to be in compliance with Title IX.

North Carolina State University

College of Humanities and Social Sciences
Department of Physical Education

Box 8111
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FAX (919) 515-8149

May 24, 1995

The Honorable Howard P. McKeon
United States House of Representatives
Washington, DC 20515

Dear Representative McKeon

Since you are a member of the Subcommittee on Post-Secondary Education, which is the committee that will most likely deal with the issue of the College Football Association and the American Football Coaches Association asking to be protected from Title IX, I urge you to support women's athletics and deny this protection!

I have several reasons to support this position. You should not support an affirmative action program to protect football, because football players have been anything but disadvantaged. Neither football, nor any institution or program, should be allowed to justify gender discrimination based on the excuse that it cannot financially afford to treat male and female students equally - finances have nothing to do with the law! Finally, excluding football from Title IX would give this sport the license to continue excessive program expenditures, and to justify schools giving 100-150 more athletic opportunities for male athletes than for female athletes. This is not right!

I have a niece who is 12 years old. When she goes to college in 6 years, I would like her to have the same amount of opportunity to participate as an athlete as all male students have now. I did not have those opportunities when I was in college - it is time for a change! Most universities are not even close to being in compliance with Title IX!

Sincerely,

Kathy Davis

Kathy Davis
Associate Professor

North Carolina State University is a land-grant university and a constituent institution of The University of North Carolina

May 9, 1995

STATEMENT OF CEDRIC W. DEMPSEY, EXECUTIVE DIRECTOR
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
TO THE
SUBCOMMITTEE ON POSTSECONDARY EDUCATION, TRAINING AND LIFELONG LEARNING

On behalf of the National Collegiate Athletic Association (NCAA), I am pleased to submit this statement and accompanying information to the Subcommittee on Postsecondary Education, Training and Lifelong Learning for its consideration as it reviews Title IX of the Education Amendments of 1972.

The NCAA is a voluntary association of nearly 1,100 institutions, conferences, organizations and individuals devoted to the sound administration of intercollegiate athletics. The primary purpose of the Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body. Activities of the NCAA membership include formulating rules of play for NCAA sports, conducting national championships, adopting and enforcing standards of eligibility, and studying all phases of intercollegiate athletics.

In 1992, the NCAA completed a study designed specifically to analyze expenditures for women's and men's athletics programs (Attachment No. 1). While the study was not designed to gauge Title IX compliance, much of the data, in fact, indicated problems with compliance: undergraduate enrollment was roughly evenly divided by gender, but men constituted 69.5 percent of the participants in intercollegiate athletics and their programs received approximately 70 percent of the athletics scholarship funds, 77 percent of operating budgets and 83 percent of recruiting money.

The report's finding that more money is spent on men's programs than on women's programs is explained in large part by the fact that men's participation in intercollegiate athletics exceeds women's participation by a ratio of 2 to 1.

(2)

with much of this ratio due to football and the lack of a comparable sport for women. With respect to accommodation of interests and abilities, offering football ordinarily increases the number of participation opportunities provided to men and therefore also is likely to increase the number that must be offered to women to accommodate equivalently their athletics interests and abilities.

In the spring of 1992, following the publication of the study, then NCAA Executive Director Richard D. Schultz said, "We must be proactive, we must be a leader. We have the resources within the NCAA, and with the people we can call on, to deal with this problem and solve this problem. This is more than a financial issue; it's a moral issue as well." The NCAA established a task force as the first step in addressing the problem, charging it with defining gender equity, examining NCAA policies to evaluate their impact on gender equity, and recommending a path toward measuring and realizing gender equity in intercollegiate athletics.

The task force appointed was a diverse group of 16 voting members representing every NCAA division and every level within an institution -- from president to student-athlete -- assisted by seven consultants with specific knowledge and points of view. The task force was divided into two subcommittees, one to examine individual institutional standards and the other to gauge the impact of NCAA regulations and practices on gender equity.

Over the course of a year, the task force as a whole considered its subcommittees' findings and recommendations, heard the informed opinions of its consultants, evaluated considerable evidence, debated the positions brought to the table by a full range of interests and agreed upon a preliminary report in April 1993. That report was sent to the membership; and the task force's members traveled to San Francisco, Chicago and Washington, D.C., for NCAA-sponsored public meetings to hear comments about the document and the process that produced it. Testimony from those hearings, as well as written commentary sent in response [illegible] the preliminary report, were considered in preparing the final report (Attachment No. 2).

The report defines gender equity in institutionally sponsored intercollegiate athletics and enumerates its principles. It issues specific guidelines for promoting gender equity among NCAA members and at other educational levels. The report recommended, and the NCAA subsequently adopted, legislation encouraging the growth of emerging sports and changing financial aid practices to better promote women's athletics. Also recommended and adopted by the membership was the principle of gender equity incorporated into the NCAA Constitution (Attachment No. 3). The task force endorsed the NCAA Executive Committee's action to assure that men's and women's sports were treated equitably in the administration of the NCAA's 79 national championships. In addition, the task force encouraged the NCAA membership to include adherence to the principle of gender equity as a condition of certification under the newly developed Division I athletics certification program. The athletics certification program adopted by the membership does include this provision.

The report concludes with a call to action. The task force emphasized that gender equity could be achieved only through the action and commitment of individual institutions as represented by their chief executive officers and governing bodies, including state legislatures. Data compiled in the NCAA Participation Statistics Report indicate a positive response to this call. (Attachment No. 4).

A total of 295,174 student-athletes participated in NCAA sports in 1993-94, the highest level since the 1986-87 total of 295,283 and the second highest recorded since the NCAA added women's sports in 1982-83. Women student-athletes broke the 100,000 mark for the first time, with 105,190 women taking part in NCAA competition in 1993-94. The number of women student-athletes at NCAA institutions

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grew by [illegible] women or [illegible] percent in 1993-94, the fourth consecutive annual increase. In 1992-93, women's participation grew by [illegible] percent.

In 1993-94, women accounted for 35.8 percent of all student-athletes and men were 64.2 percent. Of the 1992-93 total, 34.8 percent were women and [illegible] percent were men.

A total of 189,642 men participated in NCAA sports, the most since 1986-87, when [illegible] men took part. Men's participation increased by [illegible] athletes, or 1.4 percent, from 1992-93. The increase is also the fourth in a row for men's sports.

The NCAA report also contains valuable data on sports sponsorship and squad sizes between 1982 and 1994. Certain sports, wrestling, field hockey, men's and women's fencing, and men's and women's gymnastics, have steadily declined over this period of time. However, these data indicate that participation in most sports by both men and women remains stable or is growing.

The overall growth of participation in intercollegiate athletics has occurred during a time of severe financial constraints.

An NCAA study shows that athletics programs on average lose money, although their financial health is improved over a similar study four years ago (Attachment No. 5). Even at the Division I-A level, where athletics departments averaged a profit of $660,000 in 1993, that profit disappears when institutional support (i.e., financial assistance from the general operating funds of the institution), is taken out of the picture, leaving an average deficit of $174,000.

Division I-A is unique in college sports and is the only division in which revenues exceeded expenses in a majority of football and men's basketball teams. About two-thirds of football and men's basketball programs in Division I-A showed a profit. Football programs, especially, showed a greater profitability than in past studies. For all other divisions, few teams in any sports generated a

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profit. The average athletics department in Divisions I-AA, I-AAA, II and III ran a deficit, even when income from their own institution is counted.

The cost of intercollegiate athletics is rising but it is also a sound investment. Intercollegiate athletics offer interested and able students opportunities to pursue excellence in a chosen endeavor, develop self-esteem, experience the lessons of competition, develop physical and leadership skills, and be part of a team. The benefits to be derived from participating in sports are as valuable to our daughters as they are to our sons. It is the goal of the NCAA and its member institutions to provide athletics opportunities equitably. The data we have provided the subcommittee indicate that progress is being made toward achieving the goal but much needs to be done.

* * * * *

ATTACHMENT NO. 1

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
6201 College Boulevard • Overland Park, Kansas [illegible] • [illegible]

MEMORANDUM

March [illegible], 1992

TO: Chief Executive Officers, Directors of Athletics, Faculty Athletics Representatives and Senior Women Administrators

SUBJECT: Gender-Equity Study

Enclosed please find a copy of the results of the 1991 NCAA gender-equity study.

The results are reported in summary form, with the anonymity of the reporting institutions protected. All data collected are reported here in aggregate form.

Please be reminded that the study was not designed to determine compliance or noncompliance with Title IX Federal mandates. The results are descriptive only. They do not comprise an ideal against which to measure your own situation; rather, they report a composite average of the participating institutions.

It is hoped that the results of the study will provide background information for you as you undertake gender-equity analyses on your respective campuses.

RICHARD D. SCHULTZ

RDS:[illegible]

Enclosure

cc: NCAA Administrative Committee
NCAA Conference Commissioners
NCAA Council
NCAA Executive Committee
NCAA Presidents Commission
NCAA Committee on Women's Athletics

NCAA GENDER-EQUITY STUDY

SUMMARY OF RESULTS

MARCH 1992

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INTRODUCTION

Background of the Study.

In January 1991. the NCAA Council reviewed a resolution submitted by the National Association of Collegiate Women Athletic Administrators (NACWAA) requesting. among other things. that the NCAA undertake a study to analyze expenditures for women's and men's athletics programs. The Council forwarded the resolution to the NCAA Committee on Women's Athletics for review and recommendations. After review by this committee at its February 1991 meeting. staff members developed a draft survey form. which conformed to the specifications of the NACWAA request. and submitted it to the Council. An ad hoc group of Council and Committee on Women's Athletics members reviewed the draft and modified it to ensure its appropriateness for all divisions. Ultimately. three separate forms were developed. each designed specifically for one of the three NCAA membership divisions. The differences in the data collected for each of the three divisions were determined by ad hoc committee members from each of the three divisions. These forms were sent to the chief executive officers of the NCAA member institutions with a cover letter explaining the genesis and purpose of the study over the signatures of Richard D. Schultz. NCAA executive director: Judith M. Sweet. NCAA president: and R. Gerald Turner. chair of the NCAA Presidents Commission. The forms were mailed June 14. 1991. and a return date of July 12. 1991. was requested. A good many potential respondents asked for an extension of this deadline. On August 19. 1991. a follow-up letter was sent to the institutions that had not responded.

Usable questionnaires were received from 646 institutions. with the following breakdown:

I-A	98/106	92.4 percent
I-AA	72/89	80.9 percent
I-AAA	83/103	80.6 percent
II	166/218	76.2 percent
III	227/331	68.6 percent

Coding and Keying Procedures.

Upon receipt in the national office. the completed forms were given extensive review utilizing guidelines developed for the review. Among the guidelines were procedures for dealing with the following:

1. Omitted items. Calls were made to those institutions whose surveys contained omissions. In some cases. the data were simply unavailable. In those cases. the data were coded as "missing" values.

2. Two or more responses for one item. There were occasions. especially in the range of practice times. when two or more responses most adequately described the situation at a member institution. Telephone contact was made to try to ascertain the most common time.

3. Combined salaries. Coaches are often involved in more than one sport. Frequently. institutions were able to allocate amounts of salaries to each sport: when this was not possible. the salary was simply divided by the number of sports and allocated among the sports on an equal basis. This was the approach utilized where the coaches' responsibilities involved two or more teams of one gender or where they involved teams of each gender.

4. *Combined operating expenses, recruiting expenses and scholarships*. Cross country and track were so often combined in these areas that, after futile attempts to separate them, they were finally left as reported. The result is that expenditures for cross country, as reported here, are probably underestimated and the expenditures for track and field are probably overestimated. Totals, which report average by institution, reflect expenditures for both sports, and are, therefore, not distorted.

Analysis.

The data were keyed in 11 files and transferred from tape into a Paradox database. From Paradox, the SAS library of statistical packages was used to compile the descriptive statistics. In each case, the statistics were first run on a sport-by-sport basis; i.e., data from all institutions reporting sponsorship of a given sport were added together and means were computed for that sport. For the institutional averages, each institution's data in a given category (e.g., men's scholarships) were summed; these sums were then combined to produce a grand total. The grand total was divided by the number of institutions reporting to yield an average per institution.

If three or fewer institutions reported data in a given sport, those data were omitted from the tables. This occurred most often with regard to salary information.

Discussion.

The data can be evaluated from a variety of perspectives, and for that reason, care has been taken to avoid offering conclusions or commentary thereon. One such perspective is the view that gender equity in intercollegiate athletics represents a moral and not just a legal imperative, and that responsible administrators should analyze the data in that context, asking themselves if men and women student-athletes are indeed treated equally.

It must be noted, in this regard, that the data offer only a partial view of gender equity in intercollegiate athletics. They do not, for example, lend themselves to qualitative analysis: for example, they do not show whether one team receives new uniforms every three years, while another team's uniforms are replaced every year; or whether teams have comparable lodgings when they travel off campus. Equally important, perhaps, the data do not reflect policies and practices on any individual campus, but merely show average quantitative data by NCAA divisional category of institution.

The data can also be analyzed in terms of some of the requirements of Title IX as currently interpreted by regulation and Federal policies. In general, Title IX currently requires that athletics financial assistance be allocated in proportion to the number of male and female participants in intercollegiate athletics, that all other benefits accorded participants be equivalent, and that the athletics interests and abilities of enrolled women students be accommodated to the same degree as those of men.

Because the study was not designed with a view to measuring Title IX compliance, much of the data is either not relevant to such an analysis or represents an imperfect measure of average conformity to Title IX. Certain of the data, however, may give a rough indication of the extent to which NCAA members have responded on average to some of the requirements of the statute, specifically with reference to the relative provision of athletics financial assistance and coaching assistance to male and female student-athletes, as well as provision of equivalent competitive opportunities in like sports. It is again emphasized, however, that these quantitative data represent, even in these instances, only a limited measure on average of conformity to Title IX.

Finally, it is important again to recognize that the averages contained in the charts that follow do not represent an ideal against which an institution can measure itself -- either in terms of law or one's individual sense of gender equity -- rather, they represent only quantitative averages of certain current conditions at reporting institutions.

The National Collegiate Athletic Association
March 5, 1992 MDB/URW:ssa

TABLE 1

DIVISION I OVERALL PARTICIPANTS, GRANT EXPENSES, RATIOS, N = 253 INSTITUTIONS

NUMBER M	W	MEN'S AND WOMEN'S SPORTS	Average Number of Participants Men	Women	Average Scholarship Expenses Men	Women	Ratio of Male Participants to Female Participants	Ratio of Male Scholarship Exp to Female Scholarship Exp.
224	146	Baseball/Softball	32.98	16.84	$78,556	$48,581	1.96:1	1.62:1
232	246	Basketball	15.05	13.34	$124,407	$105,873	1.13:1	1.18:1
233	232	Cross Country	13.67	11.12	$23,721	$23,417	1.23:1	1.01:1
20	20	Fencing	21.05	8.65	$12,633	$8,822	2.43:1	1.43:1
	37	Field Hockey		20.77		$73,147		
163		Football	108.07		$629,880			
7 (Div.II) 8 (Div.III)		Football -- multidivisional	87.62		$232,511			
227	92	Golf	11.82	9.07	$24,645	$32,343	1.30:1	.76:1
29	60	Gymnastics	15.55	13.12	$42,914	$61,403	1.19:1	.70:1
29		Ice Hockey	28.76		$146,400			
36	23	Lacrosse	38.36	25.96	$33,730	$28,379	1.48:1	1.09:1
19	9	Rifle	8.32	4.33	$11,337	$12,441	1.92:1	.91:1
10	9	Skiing	17.20	14.67	$41,933	$31,334	1.17:1	1.33:1
132	64	Soccer	28.48	22.34	$59,808	$47,511	1.19:1	1.26:1
133	141	Swimming	25.42	21.80	$57,861	$69,161	1.17:1	.84:1
235	237	Tennis	10.74	9.68	$28,674	$35,965	1.11:1	.80:1
203	203	Indoor/Outdoor Track	38.33	26.09	$70,000	$63,332	1.47:1	1.11:1
16	231	Volleyball	19.69	13.44	$34,010	$63,870	1.58:1	.53:1
26		Water Polo	22.56		$37,186			
83		Wrestling	30.84		$58,407			
16	20	Other	33.62	33.48	$29,967	$31,584	1.60:1	.95:1
		INSTITUTIONAL AVERAGE	250.10	111.71	$849,130	$372,800	2.24:1	2.28:1

TOTAL ENROLLMENT (Average) PER INSTITUTION, Men = 5,324 Women = 5,395 Ratio = 0.99:1

TABLE 1

DIVISION I OVERALL GRANT RECIPIENTS, CONTESTS, OPERATING AND RECRUITING EXPENSES, N = 253 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	SCHOLARSHIPS Number Allowed Men	Avg. No. Awarded in '90-91 Men (Equiv.)	Number Allowed Women	Avg. No. Awarded in '90-91 Women (Equiv.)	Average Number of Students Receiving Athletics Aid Men	Women	Average Number of Contests Men	Women	Average Operating Expenses Men	Women	Average Recruiting Expenses Men	Women
Baseball/Softball	13	8.87	11	5.99	20.67	11.96	33.17	46.00	$48,992	$24,113	$5,370	$2,614
Basketball	13	12.93	15	11.46	13.44	12.43	28.74	27.86	$167,097	$60,644	$45,917	$14,266
Cross Country	14	3.25	18	2.89	7.32	6.49	7.30	7.08	$9,448	$8,679	$914	$728
Fencing	5	1.09	5	0.79	2.77	1.17	13.20	13.25	$12,275	$7,885	$410	$901
Field Hockey			11	5.90		13.15		18.74		$20,490		$7,477
Football	85/70	76.51			80.86		11.18		$409,914		$109,759	
Ftb--multidivisional	60 (Div.II)	20.61			62.86		9.88		$64,799		$5,589	
Golf	5	3.07	6	4.36	7.67	7.06	13.68	12.53	$18,140	$19,698	$1,984	$2,170
Gymnastics	7	4.50	10	7.14	7.79	8.71	12.48	12.07	$26,837	$28,754	$2,761	$1,904
Ice Hockey	20	12.00			14.42		31.69		$90,939		$17,508	
Lacrosse	14	3.89	11	2.02	10.60	5.39	14.39	13.26	$33,038	$16,990	$3,504	$917
Rifle	6	1.13		0.98	3.50	2.80	11.28	10.12	$7,221	$5,044	$679	$690
Skiing	7	4.00	7	3.27	8.62	6.50	10.70	11.11	$14,711	$15,345	$600	$532
Soccer	11	5.50	11	4.07	15.00	12.10	18.81	18.05	$25,371	$20,849	$3,486	$1,981
Swimming	11	5.90	14	6.80	13.04	13.22	13.95	13.77	$22,306	$20,713	$3,985	$3,754
Tennis	5	3.18	8	4.22	6.43	6.11	23.09	22.54	$16,295	$14,790	$1,470	$1,313
Indoor/Outdoor Track	*	8.55	*	8.03	17.71	14.60	16.69	16.00	$35,075	$29,126	$4,017	$3,258
Volleyball	5	5.30	12	7.79	8.12	9.86	28.00	30.06	$26,271	$27,414	$1,390	$4,604
Water Polo	5	2.13			5.09		21.00		$12,498		$1,505	
Wrestling	11	6.45			14.41		18.89		$27,448		$4,170	
Other		2.50		3.89	4.89	6.05	17.45	15.58	$25,239	$19,606	$1,224	$1,343
INSTITUTIONAL AVERAGE		95.71		42.37	141.65	65.40	179.57	150.59	$612,206	$179,078	$139,132	$28,840

*See cross country

TOTAL (Average) AMOUNT FULL ATHLETICS GRANT-IN-AID, Public Institutions: Instate = $5,444 Out-of-state = $8,771 Private Institutions = $14,840

TABLE 3

DIVISION I OVERALL COACHING DATA. RATIOS. N = 253 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Percent Male	Head Coaches (Women's) Percent Female	Assistant Coaches (Men's) M Number	F	Assistant Coaches (Women's) M Number	F	Graduate Assistant Coaches (Men's) M Number	F	Graduate Assistant Coaches (Women's) M Number	F	Volunteer Asst. Coaches (Men's) M Number	F	Volunteer Asst. Coaches (Women's) M Number	F	Ratio of Participants to Coaches* M	F
Baseball/Softball	100%	70%	1.36	0.01	0.16	0.54	0.38	0.00	0.02	0.19	0.47	0.004	0.12	0.11	10.39:1	7.87:1
Basketball	100%	60%	3.37	0.00	0.42	1.21	0.69	0.01	0.05	0.49	0.37	0.004	0.09	0.13	3.39:1	3.94:1
Cross Country	98%	18%	0.36	0.05	0.23	0.09	0.17	0.02	0.09	0.06	0.18	0.02	0.08	0.07	7.59:1	6.86:1
Fencing	86%	38%	0.47	0.05	0.44	0.17	0.00	0.00	0.06	0.00	0.36	0.00	0.17	0.00	11.83:1	4.70:1
Field Hockey		98%			0.04	0.86			0.02	0.33			0.02	0.11		9.11:1
Football	100%		7.72	0.00			3.08	0.02			0.62	0.00			8.69:1	
Ftb--multidivisional	100%		5.71	0.00			0.88	0.00			0.94	0.00			10.28:1	
Golf	99%	64%	0.11	0.02	0.06	0.10	0.04	0.00	0.02	0.01	0.06	0.00	0.01	0.04	9.61:1	7.31:1
Gymnastics	100%	67%	0.59	0.00	0.61	0.37	0.24	0.03	0.10	0.21	0.10	0.00	0.03	0.02	7.93:1	5.61:1
Ice Hockey	100%		1.97	0.00			0.31	0.00			0.31	0.00			8.01:1	
Lacrosse	100%	95%	1.29	0.00	0.00	1.14	0.37	0.00	0.00	0.14	0.49	0.00	0.05	0.00	12.18:1	11.14:1
Rifle	95%	17%	0.15	0.00	0.00	0.00	0.00	0.05	0.00	0.17	0.21	0.05	0.67	0.17	5.70:1	2.15:1
Skiing	100%	0%	1.00	0.11	1.29	0.14	0.00	0.00	0.00	0.00	0.11	0.00	0.00	0.00	7.75:1	6.04:1
Soccer	100%	19%	0.84	0.00	0.52	0.31	0.21	0.02	0.09	0.14	0.19	0.00	0.18	0.02	11.72:1	9.97:1
Swimming	93%	17%	1.13	0.22	0.93	0.35	0.31	0.05	0.15	0.19	0.14	0.05	0.10	0.09	8.77:1	7.76:1
Tennis	98%	38%	0.24	0.04	0.16	0.14	0.11	0.01	0.08	0.08	0.08	0.00	0.06	0.03	7.26:1	6.25:1
Indoor/Outdoor Track	99%	20%	1.24	0.17	0.84	0.32	0.37	0.05	0.13	0.23	0.28	0.03	0.12	0.09	12.18:1	9.52:1
Volleyball	100%	60%	1.06	0.00	0.27	0.43	0.12	0.00	0.08	0.22	0.06	0.00	0.10	0.06	8.79:1	5.77:1
Water Polo	98%		0.52	0.00			0.04	0.00			0.20	0.04			12.52:1	
Wrestling	100%		0.98	0.00			0.51	0.00			0.41	0.00			9.94:1	
Other	63%	40%	2.39	1.00	1.40	1.22	1.20	1.00	1.00	1.00	1.56	2.50	1.83	1.33	5.02:1	3.81:1
INSTITUTIONAL AVERAGE	98.6%*	44.8%*	12.86	0.37	2.61	3.09	4.24	0.15	0.50	1.34	2.25	0.09	0.61	0.51	12.29:1	11.56:1

*Coaching figures are not equivalencies; they include full and part time, graduate assistants and volunteers.

TABLE 4

DIVISION I OVERALL COACHING SALARIES, N = 253 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Average Base Salary	Head Coaches (Women's) Average Base Salary	Assistant Coaches (Men's) Average Combined Salaries	Assistant Coaches (Women's) Average Combined Salaries
Baseball/Softball	$34,126	$21,169	$25,846	$11,298
Basketball	$71,511	$39,177	$75,311	$35,477
Cross Country	$15,070	$12,929	$13,539	$13,985
Fencing	$11,850	$11,170	$7,740	$7,076
Field Hockey		$21,602		$8,513
Football	$81,574		$315,683	
Ftb--multidivisional	$38,750		$56,728	
Golf	$18,049	$18,342	$13,070	$7,728
Gymnastics	$27,513	$28,024	$20,254	$16,458
Ice Hockey	$43,569		$46,801	
Lacrosse	$25,056	$18,412	$17,157	$6,831
Rifle	$8,668	$4,587		
Skiing	$16,438	$17,038	$18,035	$18,294
Soccer	$24,184	$17,647	$9,434	$5,872
Swimming	$22,953	$21,074	$17,336	$14,985
Tennis	$17,131	$16,505	$8,968	$7,703
Indoor/Outdoor Track	$26,553	$23,444	$25,768	$21,513
Volleyball	$26,097	$24,889	$14,398	$16,697
Water Polo	$18,161		$6,952	
Wrestling	$28,280		$17,577	
Other	$26,378	$20,183	$20,134	$9,685
INSTITUTIONAL AVERAGE	$272,057	$149,740	$353,339	$78,131

TOTAL COACHING EXPENSE PER PARTICIPANT (Average per institution), Men = $2,500.58 Women = $2,039.84

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TABLE 5

DIVISION I-A PARTICIPANTS, GRANT EXPENSES, RATIOS, N = 98 INSTITUTIONS

NUMBER M	NUMBER W	MEN'S AND WOMEN'S SPORTS	Average Number of Participants Men	Average Number of Participants Women	Average Scholarship Expenses Men	Average Scholarship Expenses Women	Ratio of Male Participants to Female Participants	Ratio of Male Scholarship Exp to Female Scholarship Exp
91	56	Baseball/Softball	37.08	17.76	$94.783	$69.086	2.09:1	1.37:1
98	96	Basketball	13.38	13.89	$122.119	$109.309	1.11:1	1.12:1
91	89	Cross Country	15.82	12.35	$25.564	$27.364	1.28:1	.93:1
8	7	Fencing	22.75	8.80	$9.498	$3.423	2.59:1	2.77:1
	22	Field Hockey		19.26		$86.313		
94		Football	117.03		$797.986			
91	58	Golf	13.68	9.49	$33.052	$37.798	1.44:1	.87:1
24	42	Gymnastics	15.87	13.45	$48.737	$67.658	1.18:1	.72:1
13		Ice Hockey	29.08		$156.696			
11	4	Lacrosse	40.67	25.75	$73.044	$25.883	1.58:1	2.82:1
5	3	Rifle	10.11	3.67	$10.811	$18.018	2.75:1	.60:1
5	5	Skiing	16.00	11.20	$41.550	$38.960	1.43:1	1.07:1
46	21	Soccer	29.13	23.36	$54.857	$48.801	1.25:1	1.13:1
72	73	Swimming	28.77	23.64	$73.645	$83.441	1.22:1	.88:1
87	90	Tennis	11.57	9.62	$37.665	$52.840	1.20:1	.71:1
91	89	Indoor/Outdoor Track	44.63	29.83	$84.306	$79.621	1.50:1	1.06:1
8	91	Volleyball	21.50	13.18	$29.396	$84.473	1.63:1	.35:1
10		Water Polo	26.00		$31.460			
44		Wrestling	31.30		$70.175			
9	9	Other	60.53	38.12	$36.225	$26.595	1.59:1	1.36:1
		INSTITUTIONAL AVERAGE	322.85	129.83	$1.291.118	$505.246	2.49:1	2.56:1

TOTAL ENROLLMENT (Average) PER INSTITUTION, Men = 8,551 Women = 8,155 Ratio = 1.05:1

TABLE A

DIVISION I-A GRANT RECIPIENTS, CONTESTS, OPERATING AND RECRUITING EXPENSES, N = 98 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	SCHOLARSHIPS Number Allowed Men	Avg. No. Awarded in '90-91 Men (Equiv.)	Number Allowed Women	Avg. No. Awarded in '90-91 Women (Equiv.)	Average Number of Students Receiving Athletics Aid Men	Women	Average Number of Contests Men	Women	Average Operating Expenses Men	Women	Average Recruiting Expenses Men	Women
Baseball/Softball	13	11.04	11	8.67	23.46	14.13	38.11	48.70	$66.046	$36.418	$9.068	$4.331
Basketball	15	13.15	15	12.55	13.49	12.82	28.21	28.16	$222.604	$79.707	$67.877	$21.758
Cross Country	14	3.90	16	3.48	7.36	6.38	6.93	6.73	$13.394	$12.729	$1,301	$1.147
Fencing	5	0.94	5	0.54	2.22	0.43	14.00	14.40	$14.444	$8.300	$506	$800
Field Hockey			11	7.06		13.59		19.13		$24.313		$3.303
Football	95	88.34			89.99		11.24		$579.317		$166.863	
Golf	5	3.85	6	5.33	8.12	7.20	14.24	12.30	$27.761	$23.606	$3.781	$3.083
Gymnastics	7	5.13	10	8.24	8.21	8.24	12.65	12.24	$30.234	$33.802	$3.248	$4.078
Ice Hockey	20	15.07			18.31		34.85		$120.345		$21.664	
Lacrosse	14	5.61	11	2.56	12.55	6.25	16.75	15.00	$67.551	$23.866	$5.930	$602
Rifle	4	0.89		1.43	1.80	2.67	12.38	10.40	$8.618	$6.090	$832	$1.033
Skiing	7	4.44	7	4.14	9.40	8.60	13.20	13.20	$17.153	$17.350	$550	$500
Soccer	11	5.78	11	4.84	13.39	13.52	20.67	18.38	$28.934	$23.985	$3.602	$3.434
Swimming	11	7.73	14	9.39	15.68	16.00	14.27	14.27	$30.553	$28.342	$6.318	$8.105
Tennis	5	3.98	8	6.09	7.11	6.97	24.86	23.10	$27.305	$23.440	$3.833	$2.834
Indoor/Outdoor Track	*	10.27	*	9.93	21.04	17.01	16.86	13.73	$47.030	$39.434	$6.526	$5.434
Volleyball	5	3.06	12	9.99	10.00	10.73	30.17	30.34	$30.728	$30.313	$2.158	$8.073
Water Polo	5	2.37			7.50		21.87		$17.362		$2.505	
Wrestling	11	7.96			16.36		19.02		$35.527		$8.152	
Other		3.55		3.19	5.11	5.67	18.00	13.66	$32.800	$26.113	$1.228	$1.316
INSTITUTIONAL AVERAGE		143.35		59.10	192.19	82.17	201.38	183.64	$1.049.025	$262.570	$168.996	$49.606

*See cross country

TOTAL (Average) AMOUNT FULL ATHLETICS GRANT IN AID: Public Institutions: Instate = $5.681 Out of state = $9.286 Private Institutions = $15.760

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TABLE I

DIVISION I-A COACHING DATA, RATIOS, N = 98 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Percent Male	Head Coaches (Women's) Percent Female	Assistant Coaches (Men's) Number M	F	Assistant Coaches (Women's) Number M	F	Graduate Assistant Coaches (Men's) Number M	F	Graduate Assistant Coaches (Women's) Number M	F	Volunteer Asst. Coaches (Men's) Number M	F	Volunteer Asst. Coaches (Women's) Number M	F	Ratio of Participants to Coaches* M	F
Baseball/Softball	100%	83%	1.65	0.03	0.21	0.75	0.42	0.00	0.00	0.32	0.37	0.00	0.04	0.11	10.69:1	7.24:1
Basketball	100%	67%	2.49	0.00	0.50	1.43	0.83	0.02	0.05	0.59	0.37	0.00	0.05	0.07	3.26:1	3.76:1
Cross Country	87%	26%	0.42	0.00	0.22	0.08	0.30	0.00	0.18	0.08	0.12	0.03	0.10	0.05	8.46:1	7.22:1
Fencing	75%	30%	0.42	0.08	0.40	0.20	0.00	0.00	0.10	0.00	0.17	0.00	0.20	0.00	13.62:1	4.83:1
Field Hockey		100%			0.00	0.68			0.00	0.36			0.05	0.05		9.00:1
Football	100%		8.85	0.00			3.98	0.00			0.84	0.00			8.09:1	
Golf	99%	74%	0.14	0.04	0.07	0.14	0.08	0.00	0.03	0.02	0.03	0.00	0.00	0.07	10.60:1	7.14:1
Gymnastics	100%	49%	0.74	0.00	0.68	0.32	0.32	0.04	0.10	0.22	0.09	0.00	0.05	0.02	7.59:1	5.63:1
Ice Hockey	100%		2.31	0.00			0.54	0.00			0.31	0.00			6.99:1	
Lacrosse	100%	100%	1.50	0.00	0.00	1.00	0.42	0.00	0.00	0.25	0.17	0.00	0.00	0.00	13.16:1	11.44:1
Rifle	89%	37%	0.20	0.00	0.00	0.00	0.00	0.11	0.00	0.33	0.44	0.11	1.33	0.33	5.44:1	1.23:1
Skiing	100%	0%	1.20	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.20	0.00	0.00	0.00	6.67:1	5.60:1
Soccer	100%	32%	0.76	0.00	0.50	0.33	0.22	0.04	0.23	0.27	0.20	0.00	0.14	0.00	13.12:1	9.86:1
Swimming	97%	18%	1.34	0.21	1.06	0.42	0.41	0.06	0.18	0.37	0.09	0.04	0.05	0.09	9.08:1	7.70:1
Tennis	100%	41%	0.40	0.02	0.24	0.22	0.19	0.00	0.11	0.11	0.06	0.00	0.07	0.04	6.93:1	5.37:1
Indoor/Outdoor Track	99%	22%	1.71	0.21	1.17	0.49	0.42	0.05	0.10	0.31	0.27	0.01	0.10	0.05	12.16:1	9.26:1
Volleyball	100%	46%	0.86	0.00	0.78	0.59	0.12	0.00	0.10	0.29	0.00	0.00	0.08	0.03	10.75:1	5.34:1
Water Polo	100%		0.44	0.00			0.11	0.00			0.00	0.00			16.77:1	
Wrestling	100%		1.18	0.00			0.71	0.00			0.40	0.00			9.51:1	
Other	96%	40%	2.30	1.00	1.33	1.14	1.00	1.00	0.00	1.00	1.25	1.00	1.00	1.33	7.08:1	4.33:1
INSTITUTIONAL AVERAGE	98.8%*	47.4%*	17.91	0.49	3.62	3.86	6.81	0.16	0.84	1.84	2.24	0.08	0.51	0.48	11.24:1	10.77:1

*Coaching figures are not equivalencies, they include full and part time, graduate assistants and volunteers

TABLE 8

DIVISION I-A COACHING SALARIES, N = 98 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Average Base Salary	Head Coaches (Women's) Average Base Salary	Assistant Coaches (Men's) Average Combined Salaries	Assistant Coaches (Women's) Average Combined Salaries
Baseball/Softball	$43,486	$30,781	$36,033	$17,174
Basketball	$88,084	$43,847	$95,857	$45,[illegible]
Cross Country	$22,183	$18,412	$24,311	$14,377
Fencing	$13,304	$12,362	$8,877	$9,415
Field Hockey		$24,482		$9,[illegible]
Football	$98,429		$419,871	
Golf	$27,772	$22,872	$18,591	$8,411
Gymnastics	$31,340	$32,187	$27,254	$18,843
Ice Hockey	$53,597		$58,403	
Lacrosse	$35,204	$24,453	$28,548	$3,341
Rifle	$16,133	$8,211	$7	$7
Skiing	$17,573	$17,200	$18,780	$19,591
Soccer	$31,595	$21,880	$18,482	$13,837
Swimming	$27,328	$25,780	$22,803	$19,247
Tennis	$28,612	$23,802	$11,573	$10,147
Indoor/Outdoor Track	$32,408	$27,841	$34,076	$27,658
Volleyball	$32,789	$32,335	$28,022	$24,228
Water Polo	$24,827		$14,284	
Wrestling	$33,152		$22,182	
Other	$36,891	$22,345	$34,866	$14,000
INSTITUTIONAL AVERAGE	$588,792	$206,106	$824,513	$118,867

TOTAL COACHING EXPENSE PER PARTICIPANT (Average per Institution). Men = $3,162.78 Women = $[illegible]

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TABLE 9

DIVISION I-AA PARTICIPANTS, GRANT EXPENSES, RATIOS, N = 72 INSTITUTIONS

NUMBER M	NUMBER W	MEN'S AND WOMEN'S SPORTS	Average Number of Participants Men	Average Number of Participants Women	Average Scholarship Expenses Men	Average Scholarship Expenses Women	Ratio of Male Participants to Female Participants	Ratio of Male Scholarship Exp. to Female Scholarship Exp.
61	36	Baseball/Softball	30.20	17.30	$50,776	$29,605	1.74:1	1.72:1
72	72	Basketball	15.18	13.38	$98,128	$81,847	1.13:1	1.20:1
67	66	Cross Country	13.54	11.02	$19,552	$19,895	1.23:1	.98:1
4	5	Fencing	23.25	9.20	$0	$0	2.53:1	
	21	Field Hockey		22.10		$71,776		
69		Football	96.16		$464,766			
61	14	Golf	11.00	8.43	$17,425	$20,430	1.30:1	.85:1
3	11	Gymnastics	12.67	12.27	$18,600	$47,004	1.03:1	.40:1
9		Ice Hockey	27.44		$150,865			
10	13	Lacrosse	39.30	24.85	$15,471	$20,886	1.58:1	.74:1
		Rifle						
		Skiing						
33	14	Soccer	26.88	22.36	$50,660	$35,418	1.20:1	1.43:1
30	30	Swimming	24.23	21.90	$39,627	$42,459	1.11:1	.93:1
67	68	Tennis	10.03	9.18	$19,732	$22,703	1.09:1	.87:1
68	70	Indoor/Outdoor Track	36.66	25.33	$47,636	$46,757	1.45:1	1.02:1
	67	Volleyball		12.54		$43,711		
		Water Polo						
20		Wrestling	28.65		$42,000			
4	6	Other	72.50	36.20	$33,080	$46,209	2.00:1	.72:1
		INSTITUTIONAL AVERAGE	252.16	109.42	$732,230	$239,865	2.30:1	3.05:1

TOTAL ENROLLMENT (Average) PER INSTITUTION, Men = 4,139 Women = 4,493 Ratio = 0.92:1

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TABLE 10

DIVISION I-AA GRANT RECIPIENTS: CONTESTS, OPERATING AND RECRUITING EXPENSES, N = 71 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	SCHOLARSHIPS Number Allowed Men	Avg. No. Awarded in '90-91 Men (Equiv.)	Number Allowed Women	Avg. No. Awarded in '90-91 Women (Equiv.)	Average Number of Students Receiving Athletics Aid Men	Women	Average Number of Contests Men	Women	Average Operating Expenses Men	Women	Average Recruiting Expenses Men	Women
Baseball/Softball	13	7.60	11	5.16	18.78	10.73	30.74	46.27	$27,181	$18,171	$1,487	$1,127
Basketball	15	12.80	15	11.00	15.29	13.07	28.40	27.48	$128,844	$48,111	$17,272	$8,917
Cross Country	16	3.65	16	3.15	7.16	6.32	7.00	7.06	$10,316	$8,867	$711	$651
Fencing	9	0.00	5	0.00	0.00	0.00	11.75	11.80	$11,477	$8,818	$313	$1,287
Field Hockey			11	5.81		12.50		10.48		$22,477		$1,149
Football	70	62.96			76.85		11.10		$187,139		$36,376	
Golf	5	3.02	6	3.04	6.66	6.60	12.21	11.05	$13,417	$12,111	$770	$778
Gymnastics	7	1.07	10	4.88	7.50	7.32	13.00	12.21	$12,150	$18,111	$884	$2,114
Ice Hockey	20	8.89			11.38		31.91		$77,720		$15,801	
Lacrosse	16	1.52	11	1.59	4.11	5.00	14.70	14.91	$31,149	$14,812	$3,561	$1,187
Rifle												
Skiing												
Soccer	11	4.93	11	3.13	11.07	7.67	19.31	17.14	$36,171	$23,814	$2,677	$1,838
Swimming	11	3.75	14	3.84	9.60	8.66	13.83	15.57	$17,137	$16,753	$1,517	$1,171
Tennis	5	2.07	8	3.38	5.73	5.29	21.61	20.86	$10,223	$10,361	$188	$727
Indoor/Outdoor Track	*	7.63	*	7.30	13.31	13.30	16.71	16.67	$24,353	$22,292	$1,717	$1,457
Volleyball	5		12	6.94		8.11		18.83		$21,344		$2,852
Water Polo												
Wrestling	11	4.75			11.85		18.81		$19,417		$1,187	
Other		2.30		3.76	5.25	1.81	23.37	21.93	$40,881	$21,752	$1,129	$587
INSTITUTIONAL AVERAGE		88.06		35.62	142.15	56.51	163.82	141.81	$611,459	$238,231	$70,787	$16,589

*See cross country

TOTAL (Average) AMOUNT FULL ATHLETICS GRANT IN AID. Public Institutions: Instate = $6,778   Out of state = $7,327   Private Institutions = $11,143

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TABLE 11

DIVISION I-AA COACHING DATA, RATIOS, N = 72 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Percent Male	Head Coaches (Women's) Percent Female	Assistant Coaches (Men's) Number		Assistant Coaches (Women's) Number		Graduate Assistant Coaches (Men's) Number		Graduate Assistant Coaches (Women's) Number		Volunteer Asst. Coaches (Men's) Number		Volunteer Asst. Coaches (Women's) Number		Ratio of Participants to Coaches*	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F
Baseball/Softball	100%	73%	0.85	0.00	0.08	0.33	0.49	0.00	0.06	0.19	0.47	0.00	0.16	0.06	10.73:1	9.33:1
Basketball	100%	61%	2.23	0.00	0.35	1.17	0.60	0.00	0.03	0.30	0.37	0.00	0.13	0.13	3.61:1	4.10:1
Cross Country	100%	14%	0.40	0.09	0.32	0.07	0.16	0.04	0.05	0.11	0.18	0.02	0.05	0.11	7.16:1	8.44:1
Fencing	100%	25%	0.30	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.35	0.00	0.35	0.00	13.29:1	5.26:1
Field Hockey		100%			0.05	1.00			0.00	0.19			0.00	0.14		9.29:1
Football	100%		6.23	0.00			1.89	0.05			0.60	0.00			9.84:1	
Golf	98%	53%	0.07	0.00	0.00	0.07	0.02	0.00	0.00	0.00	0.10	0.00	0.00	0.00	9.24:1	7.88:1
Gymnastics	100%	45%	0.00	0.00	0.55	0.55	0.33	0.00	0.18	0.18	0.00	0.00	0.00	0.00	9.55:1	6.99:1
Ice Hockey	100%		1.89	0.00			0.00	0.00			0.33	0.00			8.52:1	
Lacrosse	100%	100%	1.30	0.00	0.00	1.08	0.40	0.00	0.00	0.17	0.60	0.00	0.08	0.00	11.91:1	10.67:1
Rifle																
Skiing																
Soccer	100%	21%	0.79	0.00	0.57	0.21	0.33	0.00	0.00	0.14	0.18	0.00	0.21	0.00	11.69:1	10.50:1
Swimming	83%	23%	0.87	0.23	0.77	0.33	0.30	0.10	0.20	0.13	0.13	0.00	0.13	0.03	9.21:1	8.46:1
Tennis	97%	34%	0.15	0.05	0.11	0.08	0.06	0.03	0.11	0.11	0.06	0.00	0.03	0.03	7.63:1	6.24:1
Indoor/Outdoor Track	100%	26%	0.75	0.13	0.58	0.23	0.41	0.07	0.15	0.35	0.31	0.06	0.15	0.13	13.63:1	10.17:1
Volleyball		68%			0.14	0.36			0.09	0.33			0.11	0.06		6.30:1
Water Polo																
Wrestling	100%		0.81	0.00			0.39	0.00			0.14	0.00			12.79:1	
Other	93%	38%	4.00	1.00	1.20	1.30	1.00	0.00	0.00	0.00	3.50	4.00	1.00	0.00	5.37:1	7.70:1
INSTITUTIONAL AVERAGE	98.4%M	48.3%W	11.92	0.32	1.84	2.82	3.79	0.21	0.49	1.36	2.22	0.11	0.62	0.49	12.89:1	12.69:1

*Coaching figures are not equivalencies; they include full and part time, graduate assistants and volunteers.

TABLE 12

DIVISION I-AA COACHING SALARIES, N = 72 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Average Base Salary	Head Coaches (Women's) Average Base Salary	Assistant Coaches (Men's) Average Combined Salaries	Assistant Coaches (Women's) Average Combined Salaries
Baseball/Softball	$28.034	$20.700	$14.938	$8.310
Basketball	$54.907	$35.833	$59.084	$29.436
Cross Country	$18.882	$16.385	$14.956	$22.364
Fencing	$13.360	$14.141		$7.690
Field Hockey		$22.863		$8.953
Football	$57.519		$178.959	
Golf	$12.665	$11.064	$2.752	
Gymnastics	$11.931	$23.493	$0	$15.371
Ice Hockey	$43.385		$38.698	
Lacrosse	$26.436	$15.748	$14.450	$7.230
Rifle				
Skiing				
Soccer	$22.643	$17,962	$7.507	$3.705
Swimming	$23.505	$20,795	$13.766	$13,939
Tennis	$12.728	$13.123	$5.222	$3.080
Indoor/Outdoor Track	$23.639	$22.396	$17.219	$14.937
Volleyball		$21.489		$12.119
Water Polo				
Wrestling	$26.600		$16.545	
Other	$45.552	$29.605	$23.470	$13.161
INSTITUTIONAL AVERAGE	$225.483	$130.401	$275.844	$61.226
TOTAL COACHING EXPENSE PER PARTICIPANT (Average per institution). Men = $1,988.13 Women = $1.751.30				

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TABLE 13

DIVISION I-AAA PARTICIPANTS, GRANT EXPENSES, RATIOS, N = 83 INSTITUTIONS

NUMBER M	NUMBER W	MEN'S AND WOMEN'S SPORTS	Average Number of Participants Men	Average Number of Participants Women	Average Scholarship Expenses Men	Average Scholarship Expenses Women	Ratio of Male Participants to Female Participants	Ratio of Male Scholarship Exp to Female Scholarship Exp
72	56	Baseball/Softball	30.17	15.62	$80,398	$39,330	1.93:1	2.04:1
83	79	Basketball	14.56	12.63	$150,216	$123,291	1.15:1	1.22:1
78	76	Cross Country	11.57	9.87	$25,520	$22,993	1.17:1	1.11:1
4	5	Fencing	13.75	7.80	$39,378	$20,475	1.76:1	1.92:1
	13	Field Hockey		21.31		$51,178		
7 (Div II) 8 (Div III)		Football -- multidivisional	87.65		$232,511			
75	17	Golf	10.24	8.06	$18,479	$24,513	1.27:1	.75:1
3	7	Gymnastics	16.00	12.43	$12,540	$45,126	1.29:1	.27:1
7		Ice Hockey	20.86		$112,486			
14	6	Lacrosse	35.71	28.50	$66,918	$49,608	1.25:1	1.35:1
8	3	Rifle	6.88	5.67	$11,125	$4,075	1.21:1	2.73:1
3	2	Skiing	18.33	24.50	$61,713	$54,910	.75:1	1.12:1
73	28	Soccer	24.66	21.56	$66,965	$52,331	1.14:1	1.28:1
34	38	Swimming	19.47	18.18	$37,788	$38,681	1.07:1	.98:1
78	78	Tennis	10.38	10.17	$25,164	$26,476	1.02:1	.95:1
44	44	Indoor/Outdoor Track	27.41	19.73	$69,907	$52,501	1.39:1	1.33:1
8	73	Volleyball	17.88	11.40	$34,135	$56,137	1.56:1	.61:1
11		Water Polo	20.82		$28,591			
17		Wrestling	22.41		$48,756			
5	5	Other	38.22	26.21	$16,131	$23,013	1.46:1	.70:1
		INSTITUTIONAL AVERAGE	160.89	92.09	$428,640	$311,226	1.75:1	1.38:1

TOTAL ENROLLMENT (Average) PER INSTITUTION: Men = 2,556 Women = 2,927 Ratio = 0.87:1

TABLE 18

DIVISION I AAA GRANT RECIPIENTS, CONTESTS, OPERATING AND RECRUITING EXPENSES N = 83 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	SCHOLARSHIPS Number Allowed Men	Avg. No. Awarded in '80-81 Men (Equiv.)	Number Allowed Women	Avg. No. Awarded in '80-81 Women (Equiv.)	Average Number of Students Receiving Athletics Aid Men	 Women	Average Number of Contests Men	 Women	Average Operating Expenses Men	 Women	Average Recruiting Expenses Men	 Women
Baseball/Softball	13	7.18	11	5.78	18.70	10.68	33.22	46.33	$37,510	$15,866	$3,066	$1,163
Basketball	15	13.77	15	10.48	13.51	12.37	28.68	27.06	$151,063	$68,267	$36,331	$8,079
Cross Country	14	3.58	16	2.33	7.28	6.68	7.07	7.47	$7,760	$6,896	$819	$607
Fencing	5	3.72	5	1.36	8.00	2.75	13.75	12.40	$8,424	$3,001	$75	$861
Field Hockey			11	3.80		10.58		18.46		$13,424		$1,317
Ftb. multidivisional	60	30.81			62.86		9.88		$64,798		$3,589	
Golf	5	1.89	6	2.32	6.39	6.94	14.12	14.50	$11,071	$11,634	$383	$867
Gymnastics	7	1.76	10	3.80	4.67	7.57	10.67	10.71	$15,180	$13,766	$259	$677
Ice Hockey	20	7.60			9.20		26.29		$53,340		$9,304	
Lacrosse	14	6.12	11	2.57	14.30	8.00	13.86	16.17	$21,875	$12,807	$1,872	$657
Rifle	6	1.11		0.33	5.00	3.00	10.12	9.67	$5,453	$3,299	$796	$175
Skiing	7	6.67	7	5.06	8.50	7.00	10.00	11.50	$13,293	$13,447	$500	$0
Soccer	11	5.76	11	3.96	17.37	12.96	10.87	18.25	$23,736	$17,369	$2,471	$2,359
Swimming	11	3.61	14	3.67	9.81	10.06	13.38	13.13	$10,365	$9,432	$1,001	$653
Tennis	5	3.37	8	3.66	6.13	5.81	22.47	20.90	$8,948	$8,604	$306	$368
Indoor/Outdoor Track	*	8.21	*	4.76	13.49	10.72	16.38	15.47	$33,552	$17,355	$1,638	$1,123
Volleyball	5	2.94	12	5.79	7.14	8.07	25.88	30.60	$21,814	$18,517	$630	$3,137
Water Polo	5	2.62			5.00		22.00		$9,223		$172	
Wrestling	11	4.41			12.25		18.47		$15,470		$1,204	
Other		1.09		1.32	4.20	4.60	14.39	12.50	$11,061	$9,866	$417	$617
INSTITUTIONAL AVERAGE		37.43		28.00	81.53	53.83	168.88	142.70	$274,745	$113,846	$45,137	$19,107

*See cross country

TOTAL (Average) AMOUNT FULL ATHLETICS GRANT-IN-AID, Public Institutions: Instate = $3,875 Out-of-state = $6,413 Private Institutions = $14,305

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TABLE 15

DIVISION I AAA COACHING DATA, RATIOS. N = 83 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Percent Male	Head Coaches (Women's) Percent Female	Assistant Coaches (Men's) Number M	Assistant Coaches (Men's) Number F	Assistant Coaches (Women's) Number M	Assistant Coaches (Women's) Number F	Graduate Assistant Coaches (Men's) Number M	Graduate Assistant Coaches (Men's) Number F	Graduate Assistant Coaches (Women's) Number M	Graduate Assistant Coaches (Women's) Number F	Volunteer Asst. Coaches (Men's) Number M	Volunteer Asst. Coaches (Men's) Number F	Volunteer Asst. Coaches (Women's) Number M	Volunteer Asst. Coaches (Women's) Number F	Ratio of Participants to Coaches* M	Ratio of Participants to Coaches* F
Baseball/Softball	100%	58%	1.36	0.00	0.16	0.47	0.24	0.00	0.02	0.07	0.59	0.01	0.16	0.14	9.43:1	7.73:1
Basketball	100%	47%	2.34	0.00	0.47	0.99	0.59	0.01	0.08	0.35	0.38	0.00	0.10	0.18	3.37:1	3.98:1
Cross Country	97%	17%	0.30	0.05	0.17	0.11	0.11	0.02	0.08	0.02	0.22	0.02	0.09	0.06	6.73:1	6.45:1
Fencing	100%	25%	0.67	0.00	0.50	0.25	0.00	0.00	0.00	0.00	0.67	0.00	0.00	0.00	5.88:1	4.46:1
Field Hockey		92%			0.08	0.92			0.08	0.08			0.00	0.15		9.23:1
Ftb: multidivisional	100%		5.71	0.00			0.88	0.00			0.94	0.00			10.28:1	
Golf	99%	41%	0.10	0.00	0.06	0.00	0.01	0.00	0.00	0.00	0.07	0.00	0.06	0.00	8.68:1	7.20:1
Gymnastics	100%	43%	0.00	0.00	0.29	0.43	0.33	0.00	0.00	0.14	0.33	0.00	0.00	0.00	9.64:1	6.68:1
Ice Hockey	100%		1.43	0.00			0.29	0.00			0.29	0.00			9.92:1	
Lacrosse	100%	80%	1.08	0.00	0.00	1.40	0.31	0.00	0.00	0.00	0.69	0.00	0.00	0.00	11.59:1	11.88:1
Rifle	100%		0.12	0.00			0.00	0.00			0.00	0.00			6.14:1	5.67:1
Skiing	100%		1.00	0.00			0.00	0.00			0.00	0.00			9.17:1	24.50:1
Soccer	100%	7%	0.90	0.00	0.50	0.43	0.15	0.01	0.04	0.04	0.19	0.00	0.14	0.04	10.96:1	9.84:1
Swimming	94%	10%	0.91	0.21	0.82	0.24	0.09	0.00	0.05	0.08	0.25	0.09	0.16	0.13	7.64:1	7.33:1
Tennis	96%	36%	0.14	0.05	0.10	0.10	0.05	0.01	0.03	0.03	0.12	0.00	0.08	0.03	7.58:1	7.42:1
Indoor/Outdoor Track	100%	7%	0.93	0.14	0.58	0.14	0.23	0.05	0.14	0.07	0.25	0.05	0.12	0.09	10.34:1	9.22:1
Volleyball	100%	71%	1.25	0.00	0.25	0.29	0.12	0.00	0.04	0.11	0.12	0.00	0.11	0.10	7.18:1	6.05:1
Water Polo	91%		0.55	0.00			0.00	0.00			0.45	0.09			9.96:1	
Wrestling	100%		0.65	0.00			0.24	0.00			0.76	0.00			8.46:1	
Other	100%	14%	1.67	1.00	1.57	1.00	1.50	1.00	1.00	1.00	1.33	0.00	1.50	0.00	5.10:1	3.71:1
INSTITUTIONAL AVERAGE	98.5%M	38.2%W	7.65	0.29	2.10	2.34	1.59	0.08	0.34	0.66	2.28	0.10	0.68	0.57	12.81:1	11.90:1

*Coaching figures are not equivalencies: they include full and part time, graduate assistants and volunteers

TABLE 16

DIVISION I AAA COACHING SALARIES, N = 83 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Head Coaches (Men's) Average Base Salary	Head Coaches (Women's) Average Base Salary	Assistant Coaches (Men's) Average Combined Salaries	Assistant Coaches (Women's) Average Combined Salaries
Baseball/Softball	$27,323	$12,527	$17,026	$5,258
Basketball	$65,334	$34,055	$64,953	$26,962
Cross Country	$9,135	$7,637	$6,110	$4,950
Fencing	$4,013	$5,221		$2,437
Field Hockey		$14,676		$6,152
Ftb multidivisional	$38,75[illegible]		$56,729	
Golf	$9,134	$9,190	$2,11[illegible]	
Gymnastics	$13,753	$17,506	$[illegible]	$4,[illegible]
Ice Hockey	$25,181		$20,850	
Lacrosse	$14,628	$20,364	$7,206	$1,982
Rifle	$3,032			
Skiing				
Soccer	$20,526	$14,336	$5,192	$4,419
Swimming	$14,077	$12,719	$5,931	$5,544
Tennis	$9,891	$10,491	$6,386	$4,[illegible]
Indoor/Outdoor Track	$16,986	$15,219	$11,231	$12,[illegible]
Volleyball	$19,455	$18,671	$10,544	$6,935
Water Polo	$11,459		$3,921	
Wrestling	$16,477		$3,517	
Other	$11,699	$10,982	$8,044	$4,[illegible]
INSTITUTIONAL AVERAGE	$165,743	$99,593	$101,555	$41,218

TOTAL COACHING EXPENSE PER PARTICIPANT (Average per institution) Men = $1,[illegible].19 Women = $1,[illegible].18

DIVISION II SCHOLARSHIPS/BUDGETS/STAFF

1. Scholarships

	Men	Total Dollars	Women	Total Dollars
a. Number of full athletics grants-in-aid awarded in 1990-91	16.72	$114,929	8.10	$52,543
b. Number of partial athletics grants-in-aid awarded in 1990-91	74.71	$191,495	36.95	$90,670
c. Number of athletics grants-in-aid extended to the fifth year in 1990-91	5.05	$ 13,119	2.11	$ 5,753

2. Program budgets

	Men	Women
a. Total expenditures for athletics programs	$419,877	$195,078
b. Sources of revenue for athletics programs (check all that apply):	Percent	
(1) Gate receipts	86.2	70.1
(2) Student activity fees (athletics fee)	44.9	43.1
(3) Student activity fees (not related to athletics)	38.3	37.7
(4) Guarantees and options received	83.2	49.7
(5) Contributions from alumni and others	83.8	79.0
(6) Distributions from conference or other organizations for bowl games, tournaments, television	51.5	42.5
(7) Direct state or other government support	46.7	45.5

3. Coaching personnel/support staff.

a. List the number of full-time coaches (those receiving benefits):

Men's program: 6.77 Women's program: 3.51

b. List the number of part-time coaches:

Men's program: 6.09 Women's program: 4.36

c. List the number of graduate assistants:

Men's program: 3.01 Women's program: 2.16

d. Number of certified athletics training staff available to programs:

Men's program: 1.65 Women's program: 1.63

4. Number of full-time undergraduate students at this institution.

Men: 2,053 Women: 2,364 Ratio: 0.87:1

5. Ratios -- men to women.

Participation = 2.11:1 Grants-in-aid = 2.15:1 Total expenditures = 2.15:1

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TABLE 17

DIVISION II SPORT-SPECIFIC EXPENSES, N = 166 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Average Number of Participants (Men's)	Average Number of Participants (Women's)	Average Number of Contests Scheduled (Men's)	Average Number of Contests Scheduled (Women's)	Average Operating Expenses (Men's)	Average Operating Expenses (Women's)	Average Recruiting Costs (Men's)	Average Recruiting Costs (Women's)
Baseball/Softball	31.11	16.51	46.62	36.48	$23,287	$12,783	$1,635	$681
Basketball	14.94	13.40	27.29	26.86	$39,860	$25,665	$5,506	$2,865
Cross Country	11.63	9.74	7.40	7.45	$5,352	$4,638	$343	$321
Fencing								
Field Hockey		21.19		16.37		$9,014		$447
Football	86.55		10.51		$113,084		$10,511	
Golf	11.34	9.18	13.02	10.17	$7,599	$7,801	$516	$408
Gymnastics	17.50	12.42	9.50	11.82	$8,821	$17,498	$500	$1,715
Ice Hockey	33.94		33.00		$185,106		$23,763	
Lacrosse	28.43	24.10	13.00	12.25	$11,823	$6,587	$651	$280
Rifle	8.71	5.00	9.83	10.00	$10,836	$21,642	$317	$286
Skiing	13.00	9.67	8.62	8.62	$21,114	$20,519	$266	$267
Soccer	24.76	20.56	18.64	16.98	$12,922	$9,561	$1,361	$927
Swimming	19.74	19.29	12.15	12.16	$16,435	$14,452	$738	$1,280
Tennis	10.00	8.95	18.31	17.20	$11,860	$6,520	$511	$767
Indoor/Outdoor Track	29.81	21.35	13.45	14.02	$14,068	$11,940	$820	$774
Volleyball	12.38	12.32	24.50	25.94	$7,768	$14,738	$750	$1,224
Water Polo	23.50		14.00		$17,618		$4,127	
Wrestling	27.60		17.61		$19,576		$1,273	
Other	23.22	16.58	12.33	16.70	$7,285	$5,797		
INSTITUTIONAL AVERAGE	167.08	79.11	129.72	115.29	$190,470	$73,296	$17,290	$5,613

TABLE 18

DIVISION II SPORT-SPECIFIC EXPENSES, N = 166 INSTITUTIONS -- (Cont'd.)

MEN'S AND WOMEN'S SPORTS	No. of Male Asst. Coaches (Men's)	No. of Male Asst. Coaches (Women's)	Average Combined Salaries of Male Assts (Men's)	Average Combined Salaries of Male Assts (Women's)	No. of Female Asst. Coaches (Men's)	No. of Female Asst. Coaches (Women's)	Average Combined Salaries of Female Assts (Men's)	Average Combined Salaries of Female Assts (Women's)
Baseball/Softball	1.18	0.28	$7,087	$2,241	0.00	0.40		$4,191
Basketball	1.47	0.35	$19,596	$9,181	0.01	0.82	$4,500	$11,510
Cross Country	0.25	0.22	$4,024	$4,315	0.02	0.09	$2,600	$2,211
Fencing								
Field Hockey		0.00				0.90		$1,784
Football	5.03		$80,420		0.00			
Golf	0.08	0.00	$1,900		0.01	0.08		$4,[illegible]
Gymnastics	1.00	0.67	$3,000	$8,038	0.00	0.25		$7,867
Ice Hockey	1.71		$10,137		0.00			
Lacrosse	0.93	0.00	$3,892		0.00	0.50		$2,550
Rifle	0.00	0.00			0.14	0.33		
Skiing	0.67	0.44	$3,600	$6,525	0.00	0.11		$500
Soccer	0.78	0.37	$4,917	$2,150	0.00	0.33		$1,940
Swimming	0.43	0.42	$7,697	$6,149	0.14	0.42	$6,494	$3,791
Tennis	0.12	0.10	$1,999	$2,866	0.00	0.09		$2,648
Indoor/Outdoor Track	0.78	0.63	$8,580	$5,513	0.12	0.35	$4,685	$5,093
Volleyball	0.12	0.21	$1,500	$3,825	0.00	0.38		$6,146
Water Polo	0.50		$3,750		0.00			
Wrestling	0.88		$9,054		0.00			
Other	0.44	0.09	$6,417	$2,000	0.00	0.45		$2,500
INSTITUTIONAL AVERAGE	7.32	1.58	$81,074	$10,544	0.14	2.19	$6,548	$15,899

TABLE 19

DIVISION II DEPARTMENT OF ATHLETICS HEAD COACHES N = 166 INSTITUTIONS

MEN'S AND WOMEN'S HEAD COACHES	STATUS (Percent) [Men's] FT	PT	STATUS (Percent) [Women's] FT	PT	STATUS (Percent) [Men's] M	F	STATUS (Percent) [Women's] M	F	SALARY (Percent) $ 1,000 (or less)- $ 4,999 (Men's)	$ 1,000 (or less)- $ 4,999 (Women's)	$ 5,000- $ 9,999 (Men's)	$ 5,000- $ 9,999 (Women's)	$10,000- $14,999 (Men's)	$10,000- $14,999 (Women's)
Baseball/Softball	61.0	39.0	40.9	59.00	100.0	0.0	44.9	55.0	18.6	29.0	13.9	18.3	3.8	8.3
Basketball	90.0	10.0	83.3	16.6	100.0	0.0	52.5	47.4	1.8	5.5	1.8	5.5	3.7	5.5
Cross Country	37.2	62.7	37.6	62.3	95.6	4.3	83.1	16.8	43.4	44.7	8.6	11.4	8.6	7.6
Fencing														
Field Hockey			20.0	80.0			5.0	95.0		30.0		20.0		30.0
Football	89.7	10.2			100.0	0.0			2.0		2.0		0.0	
Golf	27.8	72.1	38.4	61.5	98.9	1.0	53.8	46.1	59.4	60.0	12.8	6.7	3.9	0.0
Gymnastics			72.7	27.3			63.6	36.3		0.0		9.0		9.0
Ice Hockey	76.4	23.5			100.0	0.0			12.5		6.2		0.0	
Lacrosse	0.0	100.0	22.2	77.7	100.0	0.0	0.0	100.0	69.2	22.2	15.3	33.3	7.6	22.2
Rifle	28.5	71.4	33.3	66.7	100.0	0.0	100.0	0.0	33.3	0.0	16.7	33.3	0.0	0.0
Skiing	33.3	66.7	20.0	80.0	80.0	20.0	80.0	20.0	33.3	33.3	16.7	16.7	16.7	16.7
Soccer	35.4	64.5	39.5	60.4	100.0	0.0	95.1	4.8	24.7	36.3	24.7	15.9	8.6	9.0
Swimming	51.5	48.4	48.6	51.3	83.8	16.1	57.1	42.8	21.2	18.9	9.0	16.2	9.0	5.4
Tennis	25.8	74.1	26.8	73.1	92.1	7.8	57.3	42.6	34.1	34.5	10.8	8.2	11.6	8.2
Indoor/Outdoor Track	59.4	40.5	55.4	44.5	98.6	1.3	85.2	14.7	13.1	11.5	11.0	15.9	11.8	11.5
Volleyball	28.5	71.4	57.8	42.1	85.7	14.2	24.1	75.8	50.0	21.0	12.5	9.5	12.5	11.6
Water Polo	33.3	66.7			100.0	0.0			33.3		33.3		33.3	
Wrestling	67.3	32.6			100.0	0.0			10.0		12.0		8.0	
Other	21.4	78.5	16.6	83.3	78.5	21.4	33.3	66.7	57.1	38.3	7.1	18.1	7.1	9.0
INSTITUTIONAL AVERAGE	54.1	45.8	49.6	50.3	97.5	2.4	54.6	45.3	26.6	27.5	10.5	12.1	6.6	9.0

TABLE 10

DIVISION II DEPARTMENT OF ATHLETICS HEAD COACHES N = 166 INSTITUTIONS (Cont'd.)

MEN'S AND WOMEN'S HEAD COACHES	SALARY (Percent)											
	$15,000-$19,999 (Men's)	$15,000-$19,999 (Women's)	$20,000-$24,999 (Men's)	$20,000-$24,999 (Women's)	$25,000-$29,999 (Men's)	$25,000-$29,999 (Women's)	$30,000-$34,999 (Men's)	$30,000-$34,999 (Women's)	$35,000-$39,999 (Men's)	$35,000-$39,999 (Women's)	$40,000-Higher (Men's)	$40,000-Higher (Women's)
Baseball/Softball	6.2	7.6	8.5	13.7	14.7	9.9	11.6	5.5	6.9	1.5	15.5	6.1
Basketball	1.8	7.9	3.1	10.4	10.1	21.4	14.5	23.9	20.8	8.5	61.7	11.6
Cross Country	7.8	3.8	7.8	11.4	6.0	8.5	6.0	6.7	4.3	3.8	6.9	3.8
Fencing												
Field Hockey		0.0		0.0		0.0		5.0		0.0		15.0
Football	1.0		1.3		6.2		16.5		16.5		58.8	
Golf	6.9	0.0	5.9	13.3	0.9	6.7	2.9	0.0	2.9	6.7	5.9	6.7
Gymnastics		9.0		9.0		18.1		27.2		9.0		9.0
Ice Hockey	0.0		0.0		12.5		6.2		6.2		56.1	
Lacrosse	0.0	0.0	0.0	0.0	7.6	0.0	0.0	11.1	0.0	11.1	0.0	0.0
Rifle	33.3	33.3	0.0	0.0	0.0	0.0	16.7	33.3	0.0	0.0	0.0	0.0
Skiing	0.0	0.0	16.7	33.3	0.0	0.0	16.7	0.0	0.0	0.0	0.0	0.0
Soccer	6.4	6.0	11.0	11.3	11.0	9.0	6.4	4.5	1.0	0.0	3.3	6.0
Swimming	9.0	10.8	12.1	10.8	12.1	10.9	18.1	5.4	0.0	8.1	9.0	5.4
Tennis	4.1	3.3	6.7	8.2	4.1	6.6	3.3	6.1	0.0	1.6	6.1	6.0
Indoor/Outdoor Track	5.3	7.2	11.0	18.8	15.7	8.6	10.5	10.1	10.5	5.7	9.3	10.1
Volleyball	0.0	5.6	0.0	17.1	12.5	13.6	0.0	11.6	0.0	6.1	12.5	6.7
Water Polo	0.0		0.0		0.0		0.0		0.0		0.0	
Wrestling	6.0		12.0		12.0		12.0		0.0		20.0	
Other	14.2	27.2	7.1	0.0	7.1	9.0	0.0	0.0	0.0	0.0	0.0	0.0
INSTITUTIONAL AVERAGE	6.9	6.2	8.9	12.2	8.9	11.9	9.2	10.1	7.6	6.3	18.0	6.0

TABLE 11

DIVISION III DEPARTMENT OF ATHLETICS PERSONNEL, N = 337 INSTITUTIONS

#	TITLE	STATUS (Percent)		GENDER (Percent)		SALARY (Percent)								
		FT	PT	M	F	$ 1,000 (or less)-$ 4,999	$ 5,000-$ 9,999	$10,000-$14,999	$15,000-$19,999	$20,000-$24,999	$25,000-$29,999	$30,000-$34,999	$35,000-$39,999	$40,000 Higher
319	Athletics Director Men	70.0	30.0	90.0	10.0	0.9	1.9	3.6	3.9	11.9	9.7	3.9	9.6	37.1
311	Athletics Director Women	67.8	32.2	36.4	63.6	1.0	6.5	6.5	13.9	23.6	9.6	13.9	4.5	24.7
114	Assoc. Director of Athl	71.1	28.9	52.3	47.7	3.6	7.0	6.1	3.6	8.8	14.1	15.8	18.5	24.7
190	Sports Info. Director	32.1	67.9	80.5	19.5	11.0	13.7	9.1	19.5	26.7	18.3	8.0	1.6	0.5
31	Business Officer	80.6	19.4	51.6	48.4	3.3	0.0	3.3	20.0	20.0	16.7	13.3	10.0	13.3
11	Ticket Manager	36.4	63.6	36.4	63.6	50.0	0.0	10.0	0.0	0.0	20.0	20.0	0.0	0.0
196	Trainer	63.1	36.9	73.0	27.0	4.5	7.0	6.5	8.3	26.9	18.0	18.6	8.5	3.1
138	Equipment Manager	82.7	17.3	89.3	10.7	5.1	5.8	11.6	26.0	30.4	16.3	5.8	0.0	0.7
21	Academic Counselor	47.6	52.4	69.6	30.4	5.0	15.0	5.0	10.0	15.0	10.0	10.0	15.0	15.0
30	Strength Coach	28.6	71.4	92.6	7.4	22.2	33.3	3.7	11.1	22.2	7.4	3.7	3.7	3.7
311	(Others)	66.4	33.6	55.7	44.3	3.6	7.0	8.6	13.9	19.6	17.7	6.3	10.8	13.9
	ALL POSITIONS	66.1	33.9	70.7	29.3	5.1	7.0	7.5	11.6	20.1	15.0	9.5	7.6	18.0

Table 11

DIVISION III SPORT SPECIFIC EXPENSES, N = 227 INSTITUTIONS

MEN'S AND WOMEN'S SPORTS	Number of Participants (Men's)	Number of Participants (Women's)	Practice Time* (Men's)	Practice Time* (Women's)	Operating Expenses (Men's)	Operating Expenses (Women's)	Head Coach (Percent) [Men's] M	Head Coach (Percent) [Men's] F	Head Coach (Percent) [Women's] M	Head Coach (Percent) [Women's] F
Baseball/Softball	26.36	17.16	c = 96%	c = 98%	$11,491	$7,391	100	0	34	66
Basketball	19.60	13.79	c = 85%	c = 86%	$17,731	$13,467	100	0	36	64
Cross Country	13.87	10.81	c = 96%	c = 96%	$3,312	$3,236	96	4	83	17
Fencing	15.00	8.50	c = 70%	c = 67%	$7,407	$4,278	73	27	60	40
Field Hockey		22.26		c = 99%		$9,241			4	96
Football	82.33		c = 98%		$46,917		100	0		
Golf	10.68	6.67	c = 93%	c = 95%	$6,267	$3,572	99	1	83	17
Gymnastics	17.00	12.07	c = 100%	c = 100%	$8,636	$7,068	100	0	33	67
Ice Hockey	31.36		c = 65%		$38,390		100	0		
Lacrosse	33.39	26.06	c = 97%	c = 100%	$15,080	$9,097	100	0	9	91
Rifle	11.78	7.00	c = 89%	c = 83%	$6,601	$4,259	100	0	100	
Skiing	16.75	12.80	c = 67%	c = 60%	$10,767	$10,512	87	13	80	20
Soccer	26.52	21.90	c = 85%	c = 98%	$11,355	$9,627	100	0	68	32
Swimming	17.60	17.69	c = 95%	c = 95%	$7,637	$7,526	86	14	70	30
Tennis	11.75	11.04	c = 85%	c = 98%	$4,369	$4,365	91	9	46	54
Indoor/Outdoor Track	30.85	21.38	c = 98%	c = 98%	$9,385	$7,381	98	2	85	15
Volleyball	13.86	14.61	d = 50%	c = 88%	$5,795	$8,215	79	21	25	75
Water Polo	17.10		c = 90%		$3,969		100	0		
Wrestling	20.37		c = 98%		$9,690		100	0		
Others	20.31	25.86	c = 88.6%	c = 79%	$8,636	$10,132	91.1	8.8	50.0	50.0
INSTITUTIONAL AVERAGE	215.86	115.70	c = 92.6%	c = 93.7%	$112,610	$56,132	97.4	2.7	49.8	50.1

*CODE (practice time):

a=6-9 a.m.   d=6-9 p.m.

b=1-4 p.m.   e=8-11 p.m.

c=3-6 p.m.

Ratio of male participants to female participants: 1.87:1

TABLE 11

DIVISION III SPORT SPECIFIC EXPENSES, N = 237 INSTITUTIONS -- (Cont'd.)

MEN'S AND WOMEN'S SPORTS	Median Salary** (Men's)	Median Salary** (Women's)	No. of Male Asst. Coaches (Men's)	No. of Male Asst. Coaches (Women's)	Total Salary of Male Assistants (Men's)	Total Salary of Male Assistants (Women's)	No. of Female Asst. Coaches (Men's)	No. of Female Asst. Coaches (Women's)	Total Salary of Female Assistants (Men's)	Total Salary of Female Assistants (Women's)
Baseball/Softball	h	g	1.08	0.94	$6,035	$3,340	0.00	0.54	$0	$3,680
Basketball	h	h	1.81	0.30	$6,763	$3,389	0.01	0.78	$3,250	$4,762
Cross Country	f	g	0.36	0.33	$3,253	$3,031	0.06	0.11	$1,110	$1,302
Fencing	f	f	0.66	0.33	$1,550	$1,035	0.06	0.13	$1,100	$1,746
Field Hockey		g		0.06		$3,250		0.85		$2,810
Football	i		5.81		$33,376		0.00			
Golf	f	f	0.08		$1,170		0.01	0.06		
Gymnastics	g	f		0.32		$1,917	0.00	0.60		$1,120
Ice Hockey	g		1.47		$6,096		0.00			
Lacrosse	h	h	1.34	0.12	$4,767	$2,751	0.00	0.90		$3,207
Rifle	f	f	0.11	0.17			0.00			
Skiing	f	f	0.36	0.67	$4,686	$5,322	0.19	0.13	$5,000	$4,790
Soccer	f	f	0.87	0.42	$3,160	$1,614	0.00	0.37		$3,710
Swimming	h	h	0.58	0.60	$1,916	$1,713	0.29	0.39	$2,086	$2,272
Tennis	f	f	0.15	0.11	$1,091	$2,066	0.03	0.11	$612	$1,533
Indoor/Outdoor Track	h	f	1.25	0.07	$8,394	$6,837	0.24	0.47	$4,931	$4,610
Volleyball	f	f	0.60	0.17	$1,010	$1,611	0.10	0.54		$2,667
Water Polo	f		0.50		$1,975		0.00			
Wrestling	f		0.71		$1,088		0.00			
Others	h	g	0.45	0.34	$2,895	$3,017	0.16	0.65	$3,750	$2,233
INSTITUTIONAL AVERAGE	***	****	10.28	3.62	$60,967	$7,967	0.46	3.20	$4,163	$10,559

**CODE (salary ranges):
f=$1,000-10,000
g=$11,000-20,000
h=$21,000-30,000
i=$31,000-40,000
j=$41,000-higher

***CODE (salary ranges for men):
f=$1,000-10,000=44.6%
g=$11,000-20,000=7.6%
h=$21,000-30,000=17.4%
i=$31,000-40,000=17.7%
j=$41,000-higher=12.6%

****CODE (salary ranges for women):
f=$1,000-10,000=49.4%
g=$11,000-20,000=7.8%
h=$21,000-30,000=23.7%
i=$31,000-40,000=13.3%
j=$41,000-higher=5.7%

ATTACHMENT NO. 2

FINAL REPORT
# of the
NCAA GENDER-EQUITY
TASK FORCE

Abstract

The report defines gender equity in institutionally sponsored intercollegiate athletics and enumerates its principles. It issues specific guidelines for promoting gender equity among NCAA members and at other educational levels. NCAA legislative direction for the establishment of emerging sports and changed financial aid practices is recommended. There is comment for specific NCAA committees, with advice on their practices and regulations. The report concludes with a call to action, not just by the NCAA but by what a year of deliberation clearly showed was critical to realizing gender equity -- the commitment of individual institutions as represented by their chief executive officers and governing bodies, including state legislatures. Appendices provide appropriate supporting data and information. End notes contain statements of separate views of task force members on specific points of the report. Additional materials, specifically summaries of commentary received by the task force, are available from the NCAA national office.

REPORT FROM THE NCAA GENDER-EQUITY TASK FORCE

1. Introduction.

Intercollegiate athletics offer interested and able students opportunities to experience the lessons of competition, develop physical and leadership skills, be part of a team, and enjoy themselves. Good intercollegiate athletics programs require competitive parity, universal and consistently applied rules, and an opportunity to participate. For many years, the NCAA has sought to assure those conditions, but there is clear evidence that it has not succeeded in providing the last one to women.

Precisely because there was no assurance of equal opportunity in the range of components of education, Congress included Title IX in the Education Amendments of 1972. The Federal law stipulates that:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

When, as a result of the enactment of Title IX, many institutions dedicated more resources to athletics programs for females, they saw an increase in participation by girls and women. When some institutions challenged the law's application to all aspects of higher education, most notably Grove City College, a United State Supreme Court ruling suspended Title IX's application to athletics. In 1988, the Civil Rights Restoration Act stated unequivocally that institutions receiving any Federal funds must comply with Title IX provisions in all programs. Court decisions in virtually all cases have upheld the applicability of those provisions, generally interpreting that the legislation is intended to provide women with equitable opportunities for participation in athletics. The most prominent question in legal proceedings has been how to measure equity.

In 1991, the NCAA surveyed its members' expenditures for women's and men's athletics programs. While the study was not designed with a view to measuring Title IX compliance by institutions, much of the data did, in fact, provide a basis for analysis. That analysis was disturbing: undergraduate enrollment was roughly evenly divided by sex, but men constituted 69.5 percent of the participants in intercollegiate athletics and their programs received approximately 70 percent of the athletics scholarship funds, 77 percent of operating budgets, and 83 percent of recruiting money.

In the spring of 1992, following the publication of the study, NCAA Executive Director Richard D. Schultz said, "We must be proactive, we must be a leader. We have the resources within the NCAA, and with the people we can call on, to deal with this problem and solve this problem. This is more than a financial issue, it's a moral issue as well." He established this task force as the first step to solving the problem, charging it with defining gender equity, examining NCAA policies to evaluate their impact on gender equity, and recommending a path toward measuring and realizing gender equity in intercollegiate athletics.

The task force appointed was a diverse group of 16 voting members representing every NCAA division and every level within an institution -- from president to student-athlete -- assisted by seven consultants with specific knowledge and points of view. The task force was divided into two subcommittees, one to examine individual institutional standards and the other to gauge the impact of NCAA regulations and practices on gender equity. Over the course of a year, the task force as a whole considered its subcommittees' findings and recommendations, heard the informed opinions of its consultants, evaluated considerable evidence, debated the positions brought to the table by a full range of interests and agreed upon a preliminary report in April of 1993. That report was sent to the membership; and the task force's cochairs traveled to San Francisco, Chicago, and Washington D.C., for NCAA-sponsored public meetings to hear comments about the document and the process that produced it. Testimony from those hearings, as well as written commentary sent in response to the preliminary report, were considered in reaching the report's final form, which follows.

2. Definition of Gender Equity.

The task force defines gender equity in this manner:

The Association asserts the value of equitable participation and treatment of men and women in intercollegiate athletics through its structure, programs, legislation and policies. It is the responsibility of the Association to act affirmatively to assure equity in the quantity and quality of participation in women's athletics.

At an institutional level, gender equity in intercollegiate athletics describes an environment in which fair and equitable distribution of overall athletics opportunities, benefits and resources is available to women and men and in which student-athletes, coaches and athletics administrators are not subject to gender-based discrimination.

An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics.

3. Principles of Gender Equity.

The following principles are those the Association and its member institutions should follow regarding gender equity. Legislation should be presented to the membership to have these included in the "Principles for Conduct in Intercollegiate Athletics" section of the NCAA Manual.

a. It is the responsibility of the Association's members to comply with Federal and state laws regarding gender equity.

b. The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws.

c. The Association should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws.

d. The activities of the Association should be conducted in a manner free of gender bias.

4. **Guidelines to Promote Gender Equity.**

The task force has developed the following guidelines to be used to promote and to achieve gender equity.

a. Institutions should support intercollegiate athletics participation opportunities for males and females in an equitable manner. The ultimate goal for each institution should be that the numbers of male and female athletes are substantially proportionate to their numbers in the institution's undergraduate student population. Addressing the interests of women athletes, including development of efforts to expand those interests, and continuing efforts to increase opportunities are appropriate pathways for realizing the ultimate goal of substantial proportionality of participation. Thus, the (a) participation, (b) efforts and (c) interests tests of the Title IX regulation are the appropriate tests for equitable participation.

b. An important concern in promoting and achieving gender equity is generating and sustaining the financial resources necessary to support and enhance participation opportunities for women. The history of some institutions is that those resources have been primarily and disproportionately generated by men's sports, usually football and men's basketball. While this fact cannot be used to set those programs outside of gender-equity considerations, it should be understood that, at some institutions, maintaining the revenue-generating capacity of sports, as well as increasing the revenue-generating capacity of women's sports, are essential to enhancing opportunities for women athletes. Maintaining current revenue-producing programs as one aspect of long-range planning for increasing women's opportunities is preferable to decreasing the currently provided participation opportunities for men -- especially when such maintenance may result in revenues available for both women's and men's programs. Evidence that available resources from revenue-generating activities are equitably distributed to men's and women's programs should be apparent in the evaluation of an institution's planning for gender equity.

c. Proportionally offered opportunities may not yield identically proportionate participation. For example, there may be a difference between men and women in the yield and persistence of participants whether they be recruited scholarship athletes or nonrecruited walk-on athletes. However, institutions should provide equitable encouragement, benefits and opportunities to both groups of student-athletes.

d. Proportionality does not require fixed quotas. Changes over time in interests and abilities and in overall enrollment patterns may yield different patterns of sports sponsorship for both women and men. An institution that is making the appropriate efforts need not be required to make annual changes in the varsity status or support of specific teams simply

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to achieve numerical precision. Participation interests and abilities of males and females in intercollegiate sport may be different on any individual campus and each sex should be accommodated in light of these differences. Sports offered for one sex do not have to be identical to sports offered for the other, but participation in all sports must be included in determining the appropriate participation levels for men and women.

e. Currently, more than 3.4 million male and 1.9 million female student-athletes participate at the high-school level,[*] compared with 186,045 male and 96,467 female student-athletes in NCAA sports.[**] It should be noted that these numbers may not reflect interest accurately, but may instead reflect historic inequalities in opportunities for girls and women in sports.

f. Geographic differences in the patterns of high-school and open amateur sports for both females and males may affect a particular institution's ability to recruit athletes. These differences do not relieve an institution from its obligation to provide equitable recruiting and scholarship resources and efforts for women's and men's teams, whether in-state or out-of-state, or from making the same effort and commitment to attract and retain participants once they are on campus.

g. Major gender differences in recruitment pools that create real obstacles to the equitable recruitment and/or participation of women athletes may be addressed in various ways: including, (a) offering additional participation opportunities in different sports for women athletes, and (b) offering activities to encourage and support the accelerated development of women athletes.

h. Enhancing participation opportunities for men and women requires cooperative efforts at the institutional, conference and national governance levels to: (a) increase current and generate new revenues, (b) reduce costs, (c) redistribute resources, and/or (d) expand women's sport and championship participation opportunities, as in the recent expansion of the NCAA championship programs.

i. Conferences can facilitate additional opportunities for women by encouraging their members to add sports on a conference-wide basis in order to reduce overall costs and provide good competition and championship opportunities.

j. In addition, institutions and/or conferences may consider conducting camps, clinics and workshops for elementary and middle school participants, perhaps in conjunction with conference championships, as is now being done by the Youth Education through Sports (YES) program, the Discover Women's Sports program sponsored by Sara Lee and similar programs. The task force believes these opportunities could be offered at relatively low cost and could be used as a positive public service to enhance the visibility of the institution in the community.

[*] National Federation of State High School Associations, 1992

[**] NCAA Participation Study, 1993

k. In support of participation opportunities, institutions should afford equitable treatment for male and female student-athletes in related areas, including, but not limited to:

(1) Provision of equipment and supplies;

(2) Scheduling of games and practice times;

(3) Travel and per diem allowances;

(4) Coaching and academic support services;

(5) Assignment and compensation of coaches and tutors;

(6) Provision of locker rooms, and practice and competitive facilities;

(7) Provision of medical and training facilities and services;

(8) Provision of housing and dining facilities and services;

(9) Publicity, promotions and marketing;

(10) Recruiting;

(11) Support services, and

(12) Admissions and grants-in-aid.

l. Institutions should recruit and employ quality coaches and athletics personnel on a gender-equitable basis. The enthusiasm, time and commitment for personnel recruitment in the men's programs should also be reflected in the women's programs. Aggressive efforts are needed to recruit and hire more female coaches, administrators and staff members for employment in intercollegiate athletics. Institutions should also continue to encourage and develop increased educational experiences for women in intercollegiate athletics through internships, graduate assistantships and other mentored learning opportunities to increase the pool of women candidates for coaching, administrative and staff employment.

m. Institutions should conduct gender-equity self-studies and, if inequities exist in participation opportunities or in the quality of the experience for student-athletes, should formulate and implement strategies to address these inequities in a timely manner. Institutions should have a plan to be in full compliance with Title IX by the earliest possible date.

5. **Recommendation for Legislation.**

The task force seeks the proposal of the following legislation to promote gender equity:

a. Regarding Emerging Sports for Women:

(1) Any two emerging sports identified below should be acceptable toward meeting the minimum sports sponsorship requirements.

(2) There should be minimum numbers of contests and participants and maximum financial aid limitations in the following emerging sports: (team): crew, ice hockey, team handball, water polo and synchronized swimming; (individual): archery, badminton, bowling and squash. (See Attachment A)

(3) The emerging sports identified above should be countable for purposes of revenue distribution (i.e., for sports sponsorship and grants-in-aid).

(4) The Council should create a mechanism to identify future emerging sports that would be countable for revenue distribution and sports sponsorship and to determine minimum contests and maximum grants for them.

b. Regarding Financial Aid.

(1) The maximum financial aid limitations should be increased for some Divisions I and II women's sports. (The task force recommended no changes in the existing financial aid limitations for Divisions I and II men's sports.)[1] (See Attachment B)

(2) The Council should request the Committee on Financial Aid and Amateurism and the Special Committee to Review Financial Conditions in Intercollegiate Athletics to develop a new financial aid model to decrease the amount of available athletics aid to student-athletes that is not based on need. Legislation should be proposed no later than the 1995 NCAA Convention and should exempt student-athletes already enrolled in collegiate institutions and receiving athletics aid.

6. **Other Recommendations to NCAA Committees.**

The task force forwards the following recommendations and observations to the appropriate committees for consideration and action:

a. To the Council:

(1) Development of methods to enhance hiring opportunities for women and minorities at all levels in intercollegiate athletics.

(2) Establishment of a relationship between the Association and the National Federation of State High School Associations (NFSHSA) to address issues related to gender equity, including the quality of coaching instruction available to female student-athletes at the high-school level.

(3) Repetition of the gender-equity survey of the membership at five-year intervals.

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[1] See Statement of Separate Views, Page 1.

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b. To the Executive Committee:

(1) The requirement of a minimum of 50 institutions sponsoring a sport for two consecutive years as an appropriate number for establishing a new division or National Collegiate Championship for men or women, except in emerging women's sports for a five-year period, and as necessary, a minimum of 40 institutions sponsoring the sport for two consecutive years. (Note: The exception relates to new, emerging sports for which the Association does not currently sponsor championships and not to existing championships where sponsorship has fallen below minimum requirements.)

If the number of sponsoring institutions falls below an average of 40 for the most current three-year period, a championship should be discontinued in the next academic year and a minimum of 50 sponsoring institutions should be required to reestablish a championship. In sports for which there is a combined men's and women's championship, for a five-year period, if the men's sport meets the minimum number of sponsoring institutions necessary to continue a championship, a women's championship would continue in that sport. If after five years the women's sport does not have the minimum number of sponsoring institutions necessary to continue a championship, the championship in the women's sport should be discontinued.

(2) Endorsement of the Executive Committee's report related to proposed changes in the conduct and format of NCAA championships with the following recommendations:

(a) The number of participation opportunities for male and female student-athletes in NCAA championships should be equitable.

(b) In team sports, the size of each championship field should be based on the number of institutions sponsoring the sport.

(c) In comparable individual sports, the size of each field should be equal for men's and women's championships.

(d) All individual sports should be treated comparably and all team sports should be treated comparably except for Division I basketball, which should be treated differently from other Division I team sports, but identically for each gender.

(e) In determining seeding for championships, the effects upon opportunities for women as well as the developmental level of the sport should be considered.

(f) Guidelines related to the hosting of NCAA championships should be reviewed to ensure that no policies exist that might hinder the growth of women's championships.

(g) The NCAA should pay expenses for all tournament teams, including all play-in teams.

(h) The number and types of awards provided to male and female student-athletes participating in all championships should be consistent.

(3) Continued focus on the affirmative action component of the conference grant program, including officiating.

(4) Use of affirmative action funds to inaugurate additional conference championships for women and for the establishment of conference gender-equity committees.

c. To the Committee on Athletics Certification:

Support for the committee's recommendation of 1993-94 legislation that includes gender equity as an element of certification.

d. To the Committee on Financial Aid and Amateurism:

Endorsement of the following as critical components of a new financial aid model as identified in 5-b-(2) above:

(1) Protection of needy student-athletes.

(2) Applicability to all sports and all student-athletes.

(3) Consistency and integrity in analyzing each student-athlete's need.

(4) Sensitivity to differences in cost of attendance among member institutions.

(5) Potential for direction of any savings toward achieving gender equity.

e. To the Committee on Competitive Safeguards and Medical Aspects of Sports:

Modification of the guidelines related to pregnant student-athletes to make such guidelines consistent with legal requirements set forth in Title IX. (Under Title IX, an institution may require medical certification from a pregnant female to participate in intercollegiate athletics only to the same extent that it is required of other student-athletes with conditions requiring medical attention.)

f. To the Olympic Sports Liaison Committee:

Development of greater collaborative efforts with and examine the possibility of obtaining grants (and other assistance) from the U.S. Olympic Committee to support NCAA women's championships in Olympic sports.

g. To the Committee on Women's Athletics:

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(1) Exploration of the addition of one volunteer coach, who must be a female, to the numbers of allowable coaches in men's and women's sports, not including football and basketball.

(2) Affirmation that at the institutional, conference and NCAA level, women should be involved in meaningful ways in the decision-making process pertaining to intercollegiate athletics, including the following:

(a) Eligible women should be identified and appointed to committees. Appointing bodies (i.e., Council, Administrative Committee) should increase the ratio of female representation on committees. The goal of the Association should be to achieve significant and steady annual progress in female participation. Such progress should be monitored by the Committee on Women's Athletics and reported to the membership. This recommendation should be included in Association publications (e.g., Council Handbook).

(b) Because female role models in leadership positions are important, every institution should have a senior woman administrator and should assure the inclusion of women in administrative positions. Toward that end, the NCAA should publish annually, by name of each member institution, the total number of administrative positions, the number of females in administrative positions and their specific jobs. This should include data on female and minority promotions and new employees.

(c) Numbers of female faculty athletics representatives and females on athletics councils/boards should be increased.

h. To the Special Committee to Review Student-Athlete Welfare, Access and Equity:

Consideration of legislation allowing coaches to be involved in the coaching of female student-athletes outside the playing season to increase the opportunity for female student-athletes to develop sport-specific skills. Such involvement would be limited to two sessions per week with a limit of three student-athletes at any session. Sessions may last no longer than two hours, must be included in the eight-hour limitation and may not exceed a period of five weeks.[2]

7. **Source Book.**

The task force will publish further recommendations and guidelines to assist member institutions in achieving gender equity.

8. **Conclusion.**

While this report, commissioned by our Association, attempts to provide a definition of and steps to the achievement of gender equity in intercollegiate athletics, it is the responsibility of individual colleges and universities to pursue that goal earnestly. In the task force's deliberations, two questions persisted: how can increased opportunities for women be funded, and how can provision of increased opportunities be assured?

[2] See Statement of Separate Views, Page 11.

The responsibility for providing necessary financial resources falls to individual institutions, just as does funding for all aspects of higher education. And, as in other programs, that responsibility must reside with the institutions' governing bodies, not just athletics departments. The facts that these are difficult economic times or that difficult decisions must be made are true, but they do not alter that responsibility. Chief executive officers and governing boards, and legislatures must identify the resources necessary to provide equal opportunity to all students.

Assurance of equitable treatment and opportunity for women must come from each institution. Enforcement of fairness may not be easy, but it is clearly necessary. The task force heard testimony about what is likely to happen if institutions cannot find a way to assure equity: the courts are currently enforcing adherence to the law, and Congress, as well as the Office for Civil Rights, appear prepared to monitor compliance as well.

We hope and believe that continued court judgments, new legislation and heightened governmental oversight will not be necessary. From the outset, subscribing to fundamentally fair principles in its programs was correctly described as a moral obligation for NCAA members. If, having recognized and documented that our members have neither achieved the spirit of gender equity nor complied with the letter of the law, we fail to act to ameliorate those conditions, others will be justified in finding means to do so. We call upon the membership to do what is right for all student-athletes.

The National Collegiate Athletic Association
July 26, 1993 URW:dkk

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Statement of Separate Views

1. Proposed legislation regarding increased financial aid limitations for selected women's sports. [5-b-(1), Page 6]

Separate view of Mr. Orleans and Mr. Dean:

This very far-ranging proposal has not previously been discussed by the general membership, its premises are not discussed in this report, and it is inconsistent with the task force's own statement of underlying concepts in Attachment B. Thus we recommend that it be presented at the next convention for discussion, rather than as legislation.

Adding grants may provide some short-term help to a minority of institutions which both sponsor football and already have extensive women's programs. But we believe the long-term disadvantages for both schools and individual student-athletes are so much greater as to call for full discussion by the membership before legislation is submitted -- especially because the proposal would sharply differentiate between most men's and women's sports.

- The NCAA gender-equity survey shows that only a minority of institutions now award the current maximum numbers of women's grants (most schools average only one-half the current limits), and only these few schools could make use of this proposal. Yet players added to these teams would be unavailable to the majority of other schools, and those schools would have to award even more grants in order to be competitive.
- Added grants thus could reintroduce to patterns of recruiting competition and championship participation -- in all three divisions -- the very competitive pressures based on grants-in-aid which grant limits are meant to curb in the first place. It would become far more expensive for new institutions to sponsor new sports; institutions which do not sponsor football, and thus would be unlikely to award these additional grants, would be particularly hurt.
- We should emphasize instead the addition of new sports and teams, which is what most individual institutions are likely to need to comply with Title IX in any event. Playing on new teams which a school did not sponsor previously is a much greater opportunity for individual student-athletes than being added to sports which already have full teams.

2. Recommendation to the Special Committee on Student-Athletes Welfare, regarding limited off-season coaching. [6-h, Page 9]

Separate view of Mr. Orleans:

I urge the special committee to consider legislation which would apply equally to women and men.

ATTACHMENT A

EMERGING SPORTS

Sport	Minimum Contests	Minimum Participants	Maximum Scholarships (equivalencies)
Archery	8	5	5
Badminton	8	6	8
Bowling	8	5	5
Crew	6	18	20
Ice Hockey	20	–	18
Squash	8	9	9
Synchronized Swimming	8	8	5
Team Handball	10	–	12
Water Polo	10	–	8

ATTACHMENT B

PROPOSED SCHOLARSHIP LIMITATIONS

The task force established and utilized the following criteria for modifying the current limitations on Divisions I and II grants-in-aid for women. Any modification should facilitate gender equity and should:

- Be based on reasonable numbers of athletes needed to both practice and compete in the given sport;
- Be sensitive to the injury rates reported in the given sport;
- Consider common strategies and practices currently employed in the given sport (platoon systems, pitcher rotations, substitution rules);
- Consider the maximum financial aid limitations currently allowed in the given sport. [Note: The subcommittee acknowledged that current maximums appear to be inconsistent among sports and that there is difficulty in ascertaining the rationale for present numbers.];
- Discourage stockpiling of athletes;
- Be responsive to and reflective of the number of sponsoring institutions;
- Consider racial equity;
- Be attentive to the number of athletes wishing to participate in the given sport, and
- Allow all athletes, regardless of sport, to qualify for the same maximum amount of aid.

PROPOSED DIVISION I SCHOLARSHIP LIMITATIONS – WOMEN

SPORT	No. on Team	Average Squad Size	NCAA Squad Travel Size	No. of Participants (1,000's)		No. of Institutions		Need for Practice Team(s)	Injury Factor	Recommended Max
				Div. I	Total	Div. I	Total			
Basketball	5	13	12	4	11	288	810	++	++	15
Cross Country *	7	12	7	3	8	286	677	-	++	8
Fencing		10		< 1	< 1	28	47	+	-	5
Field Hockey	11	22	18	2	4	74	213	++	+	16
Golf	5	9	5	1	< 2	111	162	-	-	6
Gymnastics		13	12	1	1	69	96	-	+	12
La Crosse	11	25	28	1	3	24	122	++	+	15
Ski		14	12	< 1	1	10	44	-	+	7
Soccer	11	22		2	7	91	350	++	++	16
Softball	9	17	18	3	10	182	605	+	+	14
Swimming/Diving	–	23	18	4	8	165	394	-	-	16
Tennis	6	10	8	3	7	283	723	+	-	8
Track	–	24	–	6	12	247	561	-	+	18
Volleyball	6	13	12	3	10	270	762	++	+	12
										160

EMERGING SPORTS FOR WOMEN

Archery										5
Badminton										8
Bowling										5
Crew										20
Ice Hockey										18
Squash										9
Synchronized Swimming										5
Team Handball										12
Water Polo										8
										90/250

* Applicable if only sponsor Cross Country without track and field.

PROPOSED DIVISION II SCHOLARSHIP LIMITATIONS – WOMEN

SPORT	No. on Team	Average Squad Size	NCAA Squad Travel Size	No. of Participants (1,000's)		No. of Institutions		Need for Practice Team(s)	Injury Factor	Recommended Max
				Div II	Total	Div II	Total			
Basketball	5	14	12	3	11	216	810	++	++	12
Cross Country	7	10	7	2	8	158	677	-	++	0
Fencing		–		-	< 1	0	47	+	-	5
Field Hockey	11	23	18	< 1	4	13	213	++	+	10
Golf	5	8	5	< 1	2	19	62	-	-	6
Gymnastics		14	12	< 1	1	12	96	-	+	7
La Crosse	11	24	28	< 1	3	10	122	++	+	12
Ski		11	12	< 1	< 1	12	44	-	+	7
Soccer	11	20		1	7	60	350	++	+	16
Softball	9	17	18	3	10	171	605	+	+	10
Swimming/Diving	–	20	18	1	8	52	394	-	-	10
Tennis	6	9	8	1	7	160	723	+	-	6
Track	–	21	–	2	12	113	561	-	+	18
Volleyball	6	13	12	3	10	201	762	++	+	8
										127

EMERGING SPORTS FOR WOMEN

Archery								5
Badminton								8
Bowling								5
Crew								20
Ice Hockey								18
Squash								9
Synchronized Swimming								5
Team Handball								12
Water Polo								8
								90/217

NCAA SAM drh/4/30/93 Revised URW dkk/7/8/93

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April 28, 1995

Honorable Howard McKeon
Chairman
Subcommittee on Postsecondary Education,
Training & Life-Long Learning
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

RE: Hearings on Title IX of the Education Amendments of 1972 May 9th, 1995

> Today, education is perhaps the most important function of state and local governments...such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> \- Chief Justice Earl Warren
> Brown v. Board of Education

Dear Chairman McKeon:

In regard to the Oversight Hearings on the impact of Title IX of the Education Amendments of 1972 (Title IX) on athletic opportunities for male and female student-athletes involved with intercollegiate athletics, the following comments are submitted.

I am the author of two law review articles examining Title IX: Women & Athletics: A Twenty Year Retrospective on Title IX, 9 University of Miami Entertainment & Sports Law Review 1 (1992) and The Explosion of Title IX Litigation in Intercollegiate Athletics During 1992-93: Defining the "Equal Opportunity" Standard, 1994 Detroit College Law Review 953 (Fall 1994). The latter article was recently cited in the federal district court decision in Cohen v. Brown University, No. 92-2483 (D. R.I. March 29, 1995) (Pettine, J.) (Slip op. at 4).

I. Introduction: Title IX Covenant Between the Department of Education and the Nation's Colleges and Universities

The Supreme Court issued its landmark decision in Brown v. Board of Education, and concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 U.S. 483, 495 (1954).

Intercollegiate and interscholastic athletics are the only educationally sponsored endeavors that permit separate programs for male and female students. If the educational institutions are permitted such separate athletic programs, then the courts, Congress, the Department of Education, and the educational institutions must be vigilant and scrupulous in requiring that such programs are indeed equal.

The recipients of federal funds, which in many instances on the post-secondary level can rise to millions of dollars, agree in return for such funding to refrain from discriminating on the basis of sex in their education institutions. Simply put, the quid pro quo for the educational institutions receipt of federal funds is the assurance that the school shall comply with Title IX. See 34 C.F.R. § 106.4 (a) (1994).

The court in Cook v. Colgate University summarized the tenor of the Title IX participants:

> Equal athletic treatment is not a luxury. It is not a luxury to grant equivalent benefits and opportunities to women. It is not a luxury to comply with the law. Equality and justice are not luxuries. They are essential elements which are woven into the very fiber of this country. They are essential elements now codified under Title IX. Many institutions of higher education apparently hold the opinion that providing equality to women in athletics is both a luxury and a burden. The feeling seems to be that to afford such equality to women is a gift and not a right. 802 F. Supp. 737, 750 (N.D.N.Y. 1992).

Such an attitude belies the good faith requirement that attaches to a party to a contract.

II. Historical Background

The Supreme Court in Frontiero v. Richardson stated:

> There can be no doubt that our nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women not on a pedestal, but in a cage ... As a result of notions such as these, our statute books gradually became

> laden with gross, stereotypical distinctions between the sexes and, indeed, throughout much of the 19th Century the position of women in our society was in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children....And though blacks were guaranteed the right to vote in 1870, women were denied even that rights...until adoption of the Nineteenth Amendment half a century later [in 1920]...because of the high visibility of the sex characteristic, women still face pervasive, although at times more subtle, discrimination in our *educational institutions*, in the job market and, perhaps most conspicuously, in the political arena.... the sex characteristic frequently bears no relation to ability to perform or contribute to society. As a result, statutory distinctions between the sexes often have the effect of invidiously relegating without regard to the actual capabilities of its individual members. 411 U.S. 677, 685 (1973) (Emphasis supplied).

III. Title IX Statute

President Richard M. Nixon signed Title IX into law in 1972. The statute prohibits sex discrimination in any education program or activity that receives federal funds. By application, this would cover any athletic activity or program provided by the educational institution.

The foundation section states, in pertinent part:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. 20 U.S.C. § 1681 (a).

As Congresswoman Cardiss Collins noted in the multiple hearings on gender equity in athletics that she presided over during 1992-93 as Chair of the Subcommittee on Commerce, Consumer Protection & Competitiveness, "[f]or too many years, schools have been spending more effort to find excuses not to comply with title IX than to find ways to implement the law."

IV. Tortured History of Title IX

This laudable legislation has had a tortured history. Title IX was passed almost twenty-three years ago. However, the intervening years demonstrate twenty-three years of at best, good intentions but minimal or begrudging action, benign neglect, and lack of good faith. Just when it looks like Title IX will and should be fully enforced, another roadblock is presented to forestall complete compliance.

A. Congress Rejects Attempts to Exclude Football

As soon as it became apparent that Title IX would be applied to intercollegiate athletics, numerous attempts were made by members of Congress who began introducing legislation that would restrict or abolish Title IX. For example, the Tower Amendment first introduced in 1974 would have, in effect, exempted men's intercollegiate football and basketball from Title IX's application. Such proposed legislation were not passed. Rather, the Javits Amendment, was incorporated, which resulted in the Title IX regulations. See supra Heckman, Women & Athletics, for an detailed exposition of the history of Title IX.

B. Title IX Regulations

Congress approved of the Title IX regulations in 1975, and which are in existence now. The two principal regulations examining athletics are found in 34 C.F.R. § 106.37 (c) (1994) and 34 C.F.R. § 106.41 (1994).

i. Equal Scholarships For Male and Female Student-Athletes Are Not Mandated by Title IX

The first regulation addresses the issuance of athletic scholarships. It directs that the percentage of athletic scholarships must substantially equal the percentage of student-athletes of each sex, rather the percentage of students. 34 C.F.R. § 106.37 (c). Recently, in a case of first impression, the federal district court in Gonyo v. Drake University, No. 4-93-70470 (S.D. Iowa March 13, 1995) (Vietor, J.) ruled that the effective accommodation of student interests and abilities found in the equal opportunity subsection of the other Title IX regulation would take precedence over the satisfaction of the "scholarship test." See Diane Heckman, Case Summary: Gonyo v. Drake University, NOLPE Notes, June 1995 (upcoming).

The second regulation, designated "Athletics" is divided into four subsections. Subsection (a) reiterates the principal intent of the Title IX statute. 34 C.F.R. § 106.41 (a) (1994).

C. Contact Sports Distinction

The second regulation circumscribes when coed or single sex sports teams must be provided pursuant to whether a sport was designated a contact or non-contact sport. 34 C.F.R. § 106.41 (b) (1994). An review of this provision must be examined in the era in which Title IX was enacted. Athletic opportunities for males at all levels of athletic participation in this country - interscholastic, intercollegiate, Olympic and professional - were longstanding, plentiful and complete. However, at best, females had few opportunities or were struggling with clearly unequitable conditions. This provision set forth what sports had to be open to female athletes by providing that in contact sports, an educational institution was not required to have female participation on the men's contact sports teams.

Contact sports were defined to include the following sports: boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact. As a result of the open-ended defininition, sports such as baseball and soccer have also been deemed by the courts as contact sports, and thus would not have to allow females to participate. The Title IX regulations are deemed neutral in not requiring a school to field a coed team in a contact sports. However, the history of the so-called neutrality has been to sanction preclusion of females from competing on any contact sports with males. As a result, the academic institutions can foreclose female participation from the major American sports with impunity.

As to non-contact sports, such as swimming, track and field, volleyball, tennis and golf, females were only given the opportunity to try-out for the males's teams. In non-contact sports, individual females may tryout for the all-male teams where no team is provided for the females due to their being historically disadvantaged against. There was no affirmative actions here; females were not even given a spot on any teams. The effectiveness of this provision in protecting male athletes can be seen from the fact that to date, there has not been one case instituted by a male collegiate student seeking participation on a female team, regardless of whether the sport is a contact or non-contact sport, since Title IX's existence in 1972.

D. Equal Opportunity Standard

The third subsection, designated "Equal opportunity," contains the pinnacle mandate of Title IX protection in athletics. 34 C.F.R. § 106.41 (c) (1994). It enumerates ten non-exclusive program areas, which along with other areas, such as recruitment of student-athletes and support services provided, may be examined.

1. Tripartite Effective Accommodation Test Belies the Rhetoric that Title IX is a Quota Statute

The first program area and the most important program area requires an examination of "whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes." 34 C.F.R. § 106.41 (c)(1). The effective accommodation test utilized to determine compliance with the first program area requires satisfaction of one of three prongs: (1) substantial proportionality between the percentage of students and student-athletes; or (2) history and continuing practice of program expansion; or (3) whether the current program fully and effectively satisfies the interests and abilities. The First, Third, Sixth, Seventh and Tenth Circuit Courts have given their judicial imprimatur to the utilization of the "Effective Accommodation" test, in respectively, Cohen v. Brown University, 991 F.2d 888 (1st Cir. 1993); Favia

v. Indiana University at Pennsylvania, 7 F.3d 332 (3d Cir. 1993); Horner v. Kentucky High School Athletic Association, No. 93-5191 (6th Cir. Dec. 22, 1994); Kelley v. Board of Trustees of the University of Illinois, 35 F.3d 265 (7th Cir. 1994), cert. denied, ___ S. Ct. ___ (Jan. 23, 1995); Roberts v. Colorado State Board of Agriculture, 998 F.2d 824 (10th Cir. 1993), cert. denied, 114 S. Ct. 580 (1993).

E. Equal Funding is Not Required

This subsection also provides that equal funding of separate athletic programs need not be provided. It requires simply that sufficient funding be provided. It states:

> Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex. 34 C.F.R. § 106.41 (c).

The fourth subsection allowed intercollegiate programs three years to come into compliance. The regulations were enacted on July 21, 1975. 34 C.F.R. § 106.41 (d) (1994).

Then the Department of Health, Education and Welfare issued an official Policy Interpretation during 1979 elaborating on the athletic regulations. 44 Fed. Reg. 71,413 (1979). The Policy Interpretation in essence gave colleges and universities additional time to comply.

Then once the Title IX predicates had been established, schools started challenging the jurisdiction of Title IX. It resulted in the February 1984 decision in Grove City College v. Bell, 465 U.S. 555 (1984), in which the Supreme Court concluded that Title IX only applies when the specific educational program or activity received federal funds. The Court held that when college students received federal monies, this went only to the school's financial aid office and not to the school or college as a whole and all of its programs or activities. As a result, since few athletic departments of post-secondary educational institutions received federal financial assistance directly, Title IX was rendered, in essence, a nullity.

Thereafter, it took not months, but four years for Congress to pass the Civil Rights Restoration Act of 1987 (1988 Amendments) on March 22, 1988, which directed that if an academic institution received any federal financial assistance then Title IX would apply to the university or college as a whole and all of its programs and activities - thus, re-establishing the original intent of Title IX. 20 U.S.C. § 1687, 102 Stat. 28, Pub. L. 100-259 (1988).

On February 26, 1992, almost twenty years after Title IX's enactment, the Supreme Court in the unanimous decision in Franklin v. Gwinnett County Public Schools, 112 S. Ct. 1028 (1992), ruled that compensatory damages may be awarded in Title IX actions when intentional discrimination is established.

As recently as last fall, Congress passed the "Equity in Athletics Disclosure Act," as part of amendments to the Higher Education Act of 1965. The provision requires certain coeducational institutions of higher education to prepare and make available to students, potential students and the public a report on the participation rates, financial support, and other information on men's and women's intercollegiate athletic programs.

During the last few years, female collegiate-athletes frustrated at the inaction or minimal actions of their universities fired back by instituting federal lawsuits, and were successful. See supra Heckman, The Explosion of Title IX Litigation in Intercollegiate Athletics.

V. The Claim that Intercollegiate Football is an Endangered Species is an Oxymoron

It is ludicrous to listen to the whining of the collegiate football fraternity, that they should be excluded from Title IX, a whine that incidentally goes back more than twenty years. Surely the statute of limitations has expired on their perceived complaints. Clearly, the Subcommittee should not support an affirmative action program to protect football. Football players have been anything but disadvantaged. Neither football nor any instutition or program should be permitted to justify gender discrimination based on the excuse that it cannot financially afford to treat male and female students equally. See Scorecard: The Third Sex, Sports Illustrated (ed. Alexander Wolff and Richard O'Brien), Feb. 7, 1995, at 15.

The myth of revenue-producing sports necessarily being profit making continues to be debunked; and with schools undergoing budgetary reviews, the viability of the bloated sacrosanct 85 roster of collegiate football squads should be scrutinized. If a coach of a women's team went to an athletic director in 1995 and indicated that even though the sport only allows eleven players to be on the field at one time, that the coach wanted 85 players, certainly that coach would be laughed out of the room. It must be remembered that the collegiate football is supposed to be part of the educational experience, and not a professional undertaking.

The Chronicle of Higher Education reported that women comprised 50.8% of the undergraduate students at NCAA Division I institutions during the 1993-94 academic year, but only 33.6% of student-athletes. The women received 35.7% of the athletic scholarships. Debra E. Blum, Slow Progress on Equity, Chronicle of Higher Education, Oct. 26, 1994, at A45. Specifically, Division I schools averaged $1,463,524 on athletic scholarships of which 35.7% went to female athletes. Survey, Athletics Participation and Scholarships at 257 NCAA Division I Institutions, Chronicle of Higher Education, Oct. 26, 1994, at A48, A51. For example, the two participants in the NCAA Men's 1994-95 Final Basketball Championship, UCLA and Arkansas have the following percentages: UCLA had 65.5% male athletes and 34.5% female athletes, and out of a total athletic scholarships of $2,728,365, of which 36.2% went to female athletes; and at the University of Arkansas at Fayetteville had 73.6% male athletes and only 26.4% female athletes, and out of a total athletic scholarships of $1,631,077, of which 27.5% went to female athletes. Id. at A50.

In Hoover v. Meiklejohn, 430 F. Supp. 164 (D. Colo. 1977), the court confronted with a gender equity claim instructed the school that it has three options to attain compliance: (1) eliminate the entire athletic program; (2) provide both sexes with an equitable program or (3) allow females to participate on the males' teams. The purpose of Title IX is to provide opportunities and not eliminate them. Only recently, have members of any men's teams sought redress pursuant to Title IX. See e.g., Kelley, supra and Gonyo, supra. The men's nonrevenue sports should seek an accounting from their universities when decisions are made to eliminate those teams, as to the total expenditures of the men's athletic program.

VI. Athletic Employment: The Glass Sneaker

Another issue is whether unequal compensation accorded coaches of women's teams vis-a-vis the coaches of the men's intercollegiate teams constitutes a violation of Title IX. The issue becomes especially refined when it is a comparison of Division I coaches in the same sport -- where the operative difference is the sex of the students coached.

The compensation area should involve a two-step analysis: (1) does the Title IX "equal opportunity" regulation prohibit such a discrepency, as the sixth program area specifically enumerates the "compensation" factor, 34 C.F.R. § 106.41(c)(6) (1994); and (2) does the employment regulation governing "compensation" prohibit this situation. 34 C.F.R. § 106.54 (1994). To date, no court has yet adressed both regulations to arrive at a determination.

Three area of possible discrimination arise concerning: (a) women coaching women's teams; (b) men coaching women's teams, and (c) female-athletes being coached. See supra Heckman, The Explosion of Title IX Litigation, at 1002.

The first situation is especially poignant in light of the fact that 98.6% of men coach men's Division I teams. NCAA Gender Equity Study (1992), at Table 3. Furthermore, men coach approximately 54.2% of the women's Division I teams. Id. Moreover, coaches of men's teams receive better compensation than coaches of women's teams. The best paid coaches are NCAA Division I football coaches who averaged $81,574. Id. at Table 4. Coaches of Division I men's basketball teams generally had salaries of $71,511, compared to salaries of those coaching women's teams averaging $39,177. Id. As a result, since the coaches of the men's teams generally receive higher salaries than the coaches of the women's teams, and the women are statistically impacted in obtaining all coaching positions, as evidenced from the deplorable statistics in coaching men's teams, then a woman is disparately impacted from achieving compensation comparable to her male colleagues. *See supra* Heckman, The Explosion of Title IX Litigation, at 1003-04.

Secondly, if is the sex of the students coached which is the operative variable in determining better compensation, then does a viable cause of action exist regardless of the sex of the individual coaching the women's intercollegiate team.

It must be remembered that another Title IX regulation dealing with the "Effect of employment opportunities" states, "The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be limited for members of one sex than for members of the other sex." 34 C.F.R. § 106.7 (1994).

Third, the quality of the coaching received by the female student-athletes is impacted. 34 C.F.R. § 106.41(c)(6) (1994).

To put the hiring discrepancies in perspective, during the recent NCAA Men's Basketball Championships, 64 Division I teams were invited. Taking into account the following four positions: athletic director, head basketball coach and two assistant basketball coaches, this would yield a total of 254 employment opportunities. Out of this total, only two were held by women. This imbalance continues to exist unabated, without any discussion.

In my first law review article, I introduced the phrase the "glass sneaker." Unfortunately, it still exists some twenty-three years later.

VII. Conclusion

Title IX does not require equal funding of the men's and women's athletic programs; it does not require equal athletic scholarships for men and women; it does not necessarily require an equal amount of teams for each sex; it does not require that an individual female be required to play or even try-out for contact sports, which is left up to the school. Title IX does not require that the school provide the same participation opportunities for men and women. The flexibility and lack of onerous terms and conditions of Title IX are apparent. The National Collegiate Athletic Association is in support of Title IX compliance. The report of the Knight Foundation Commission on Intercollegiate Athletics, *Keeping Faith with the Student-Athletes: A New Model for Intercollegiate Athletics* (March 1991) recognized that the presidents of colleges and universities must be committed to this issue. Many universities and conferences, such as the Big Ten Conference and the SEC, with little fanfare are moving toward gender equity without angst.

Physical fitness translates into better health habits and health, increased self-esteem, and a sense of accomplishment, and a myriad of transferable skills for the business world. The females of this country should not be shortchanged from these opportunities. Revenue-producing sports are not exempted for Title IX. Attempts to do so should be swiftly and uncategorically rejected. Instead, it is time for the post-secondary educational institutions to undertake a self-study or self-evaluations, which was originally required by the Title IX regulations. 34 C.F.R. § 106.3 (c) (1994).

The contract between the United States and the nation's colleges and universities should be upheld.

If I am able to provide any further assistance to the Subcommittee, please contact me. I remain,

Very truly yours,

Diane Heckman

Enclosure
cc: Ira Berkow
Debra Blum
Hon. Norma Cantu
Hon. Cardiss Collins
Hon. Steve Gunderson
Alexander Wolff
Women's Sports Foundation

§ 106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§ 106.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

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TWENTY YEARS OF EXCELLENCE
1974 1994
WOMEN'S SPORTS FOUNDATION
SERVING GIRLS & WOMEN IN SPORTS

May 15, 1995

The Honorable Howard McKeon
Chairman, Subcommittee on Postsecondary Education
House of Representatives
Washington, DC 20515

RE: Oversight Hearings on Title IX

Dear Chairman McKeon,

Please accept this request to permit the attached letter to become an addendum to my testimony and a part of the record of the May 9 oversight hearings on Title IX by the Subcommittee on Postsecondary Education.

It was evident that members of the committee had questions about the use and appropriateness of the proportionality prong of the three-prong test for Title IX compliance in the area of participation opportunities for male and female athletes. Donna Lopiano, the executive director of the Women's Sports Foundation was a former consultant to the Office of Civil Rights and an athletic director for 17 years. In 1973, she was involved in the discussions surrounding the development of the regulations to implement Title IX in athletics. Her insights into the origins of the three-prong standard, especially on the issue of proportionality and interest/abilities, may assist the committee in understanding this complex issue.

Please accept my thanks for inviting me to testify before the subcommittee. It is always difficult to correct discrimination when the remedy involves a redistribution of financial resources. Although, after 23 years, Title IX is still more of a dream than a reality, we are making steady progress. Now is not the time to step backward.

Sincerely,

Wendy Hilliard

Wendy Hilliard
President

cc: Representative Collins
Representative Hastert
Ms. Norma Cantu, Director, Office of Civil Rights
Members of the Subcommittee on Postsecondary Education
Women's Sports Foundation Board of Trustees and Board of Stewards

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May 15, 1995

Honorable Howard McKeon
Chairman, Subcommittee on Postsecondary
Education, Training & Life-Long Learning
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. McKeon,

I am the Executive Director of the Women's Sports Foundation and attended the Title IX hearings on May 9, 1995. Prior to my present position, I was Women's Athletic Director at the University of Texas. Since I was a participant (along with representatives from other institutions) in the 1972-73 negotiations which led to the final Title IX regulations, thought that the Committee might want to know how and why the proportionality portion of the three-part test was created.

The rule making process that led up to the final Title IX regulations included meetings and negotiations with representatives from every major sport and every size institution.

The Need for Goals Whenever There are Sex Separate Programs

First Proposal

The first proposal discussed was to require equal per capita expenditures on men's and women's programs so that there would be no arguments about resources. The men's program could spend their money as they deemed appropriate and the women could do the same. As a result there could be no question about differing treatment.

The football representatives could not accept this approach. They argued that football cost more than other sports and therefore it would be inappropriate to use a per capita dollar approach.

The Next Proposal

The next approach was to require 50/50 male and female participation opportunities.

The football representatives maintained that "girls were not as interested as boys in sports." They pointed out that there were more male students in college than female students (57% male in the early 70's).

The Final Fall-Back Proposal -Which was Adopted.

The fall-back position was the "three-part test." That an institution would be in compliance if:

(1) resources were allocated based on the proportion of male and female students enrollment, or
(2) the school could show that it had a history and continuing practice of expanding athletic opportunities for women; or
(3) that the institution's programs fully and effectively satisfied the interest and abilities of women students.

This position was agreed to be in the best interest of everyone. Those persons representing football thought that "the shoe would fit." They assumed that the 57% to 43% male to female student enrollment would continue; that the opportunity test would be satisfied by adding one or two women's teams; and that few women would show any interest in sports.

The Shoe Now Pinches.

Twenty-three years have now passed. It now turns out that the male to female student enrollment is 55% women and 45% men. Many schools did not expand opportunities when it was observed that the regulations were not being enforced. Women have overwhelmingly demonstrated that they are just as interested in sports as men.

The football representatives do not now like the agreed upon test. They want to change the rules and want the Congress to overrule the Court decisions, the NCAA Gender Equity Study and the efforts of the students and parents who have sought to achieve fairness on the athletic fields.

No Change is Needed.

Title IX and the regulations appear to be accomplishing their objective. I did not hear any member of the Committee suggest that football needed any protection. I did hear concern that many institutions are dragging their feet with respect to Title IX compliance. I also heard the intent of Title IX was not to cut men's sports and should be avoided.

I want to thank the Subcommittee for holding the hearings. They provided the opportunity for the Committee to learn more about the battle for equality on our nation's playing fields. The problem can and should be solved at each institution with a little prodding now and then from the courthouse.

Sincerely,

Donna A Lopiano

Donna A. Lopiano, Ph.D.
Executive Director

cc:

Illinois State Basketball
Intercollegiate Athletics • Redbird Arena 234
Campus Box 2660
Normal, Illinois 61790-2660 • 309-438-2567

May 15, 1995

Honorable Howard P. McKeon
Economic and Educational Opportunities Committee
2181 Rayburn House Office Building
Washington, DC   20515

Dear Congressman McKeon:

I attended the oversight hearing on Title IX held by the Subcommittee on Post-secondary Education at the U.S. House of Representatives which you chaired. I would like to submit this letter as a matter of record for this Subcommittee.

The coaches of women's basketball are extremely concerned about any efforts to dilute the impact of Title IX. It was alluded to in the hearing that the interest level of females may not warrant expanded opportunities in athletics. The enclosed graph will represent the dramatic growth of female participation at the high school level since 1971. It is also interesting to note the increased participation of both men and women in the NCAA in the past five years, indicating there has not been a reduction in men's participation. Given the opportunity, females are interested in competitive sports!

Congressman Hastert expressed deep concern over the elimination of men's non-revenue sports at the expense of Title IX. Obviously, no one wants to see men's programs eliminated any more than we want to see women's opportunities diminished. However, the issue is a financial one. Athletic budgets are shrinking rather than expanding. Institutions do not have the resources to be all things to all people. A variety of factors influence sport offerings at each institution.

Is it not the legitimate autonomy of each institution to decide which sports they will sponsor within the limits of the law, NCAA regulations and their budget. If the federal government does not dictate which institutions of higher education offer a physical therapy curriculum, why should the federal government dictate which sports are offered. Both academic and athletic programs must offer the same opportunities to females as males, but which programs are available should not be legislated or protected.

I hope Title IX does not become a scapegoat in institutional decisions to drop men's minor sports. The law is just beginning to do what it was intended to do -- insure opportunities for a discriminated gender. The NCAA statistics show females are far from equal at most institutions. Change is often difficult, but it is the morally right thing to do. I urge lawmakers to not use Title IX as a political football. The law is right. Institutions of higher education, the NCAA and OCR can all impact the sports offered on each campus. Do not change the law, implement it!

Sincerely,

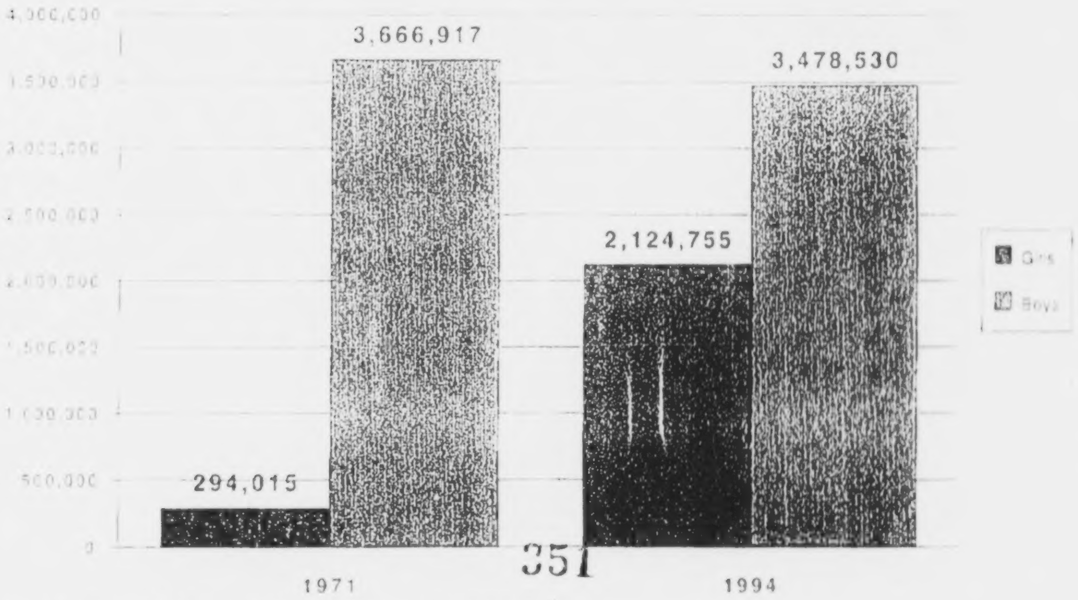
Jill Hutchison
Women's Basketball Coach
Past President Women's Basketball Coaches Association

JH:mwn

Enclosures

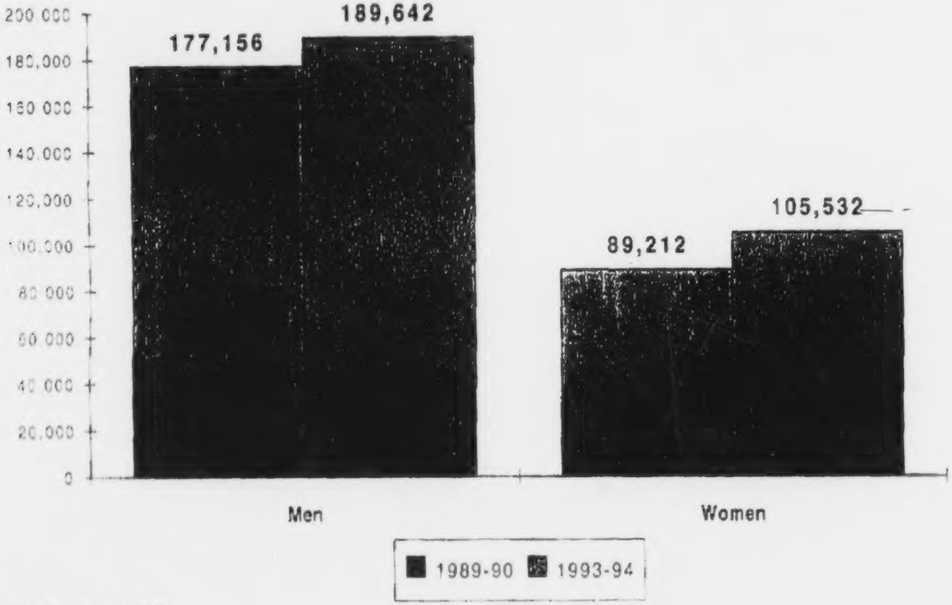
cc: Betty Jaynes, WBCA

High School Athletic Participation



1994 The National Federation of State High School Associations

Participation Growth for Men's & Women's NCAA Sports



NCAA News 2/15/95

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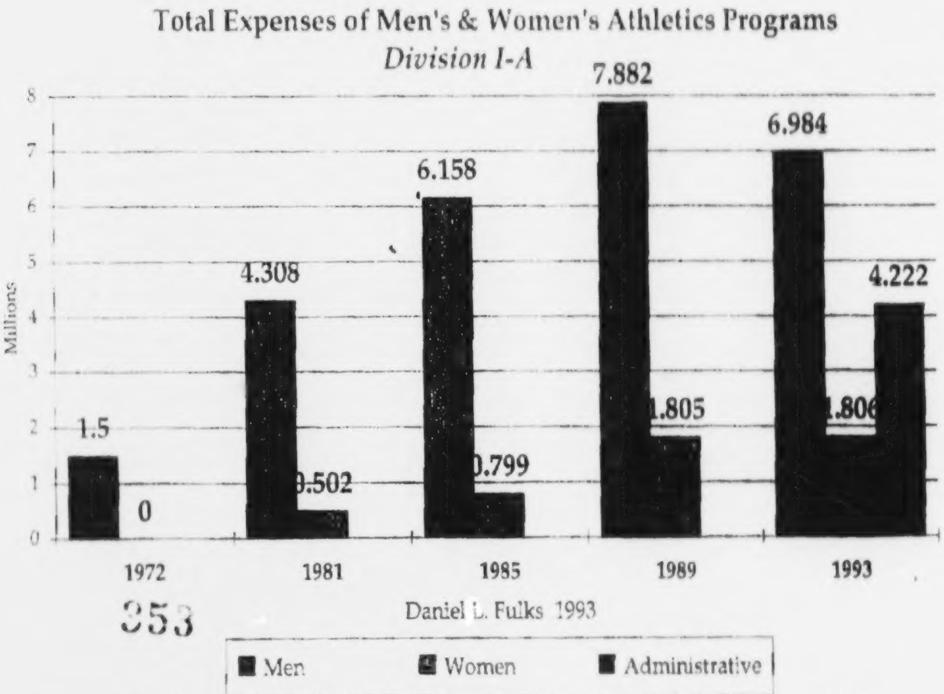

Total Expenses of Men's & Women's Athletics Programs

Division I-A

Daniel L. Fulks 1993

Nongender-specific items were reported as Administrative Expenses (no further definition was provided).

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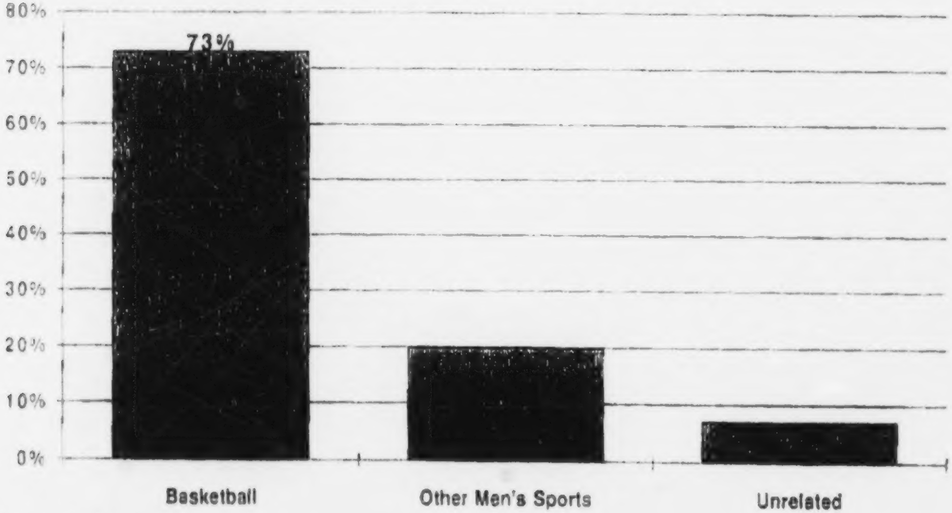
1993 Average NCAA Division 1-A Men's Programs Expenses



Daniel L. Fulks - 1993

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FEDERAL TESTIMONY

May 9, 1995

Margaret A. Jakobson

Title IX

ACADEMIC and ATHLETIC INTERCOLLEGIATE COMPETITIVE TEAM

Complainant

Ladies, gentlemen, attornies, recipient institutions and honorable members of the House of Representatives, Subcommittee on Post-Secondary Education, Training and Lifelong Learning. Today -- May 9, 1995 -- shall live for all of us as a day that will never be forgotten. This day ... seeks to answer the questions ... "What is fair?" .. "What is just?" .. and .. "How will future generations' lives be shaped .. or .. imperiled by what we testify to .. or decide .. here today!"

Contrary to popular belief ... on July 17th, 1960, the day I was born .. I did not expect to become the principle complainant in United States Department of Education Case #05-92-2099. [A case alleging discrimination on the basis of sex against myself as a female member of Moorhead State University's Academic Intercollegiate Competitive Forensics (Speech) Team (Moorhead, Minnesota), under TITLE IX of the Education Amendments of 1972].

I did not expect to file DOE-OCR Case #05-94-2037. [A retaliation case filed because of a recipient institution's failure to release my competition record, due to my filing State and federal discrimination complaints .. which through DOE-OCR intervention I would receive over two-and-one-half years (2½ yrs.) after registering my initial request with the recipient institution.]

Nor did I expect to file DOE-OCR Case #05-94-2116. [A case alleging TITLE IX discrimination on the basis of sex in intercollegiate Athletics against Moorhead State University -- which I, as a fee payer into the Student Activity Budget Account, was being asked to finance through quarterly fees. Fees assessed against the total undergraduate enrollment everytime we paid to attend 1 through 12 credits at the recipient institution. (Revision: 1 to 12 credits from 6 to 12 credits, summer, 1990.)]

Furthermore, I never planned to be a number; and I certainly did not plan that something other female students and myself, composing over 60% of that total undergraduate enrollment, were paying for -- to be called a "QUOTA."

What we were paying for was not and IS NOT a "QUOTA;" and, the entire Minnesota State University System that I was part of operates that way. To all of you that are so quick to use the term "QUOTA" in conjunction with discrimination in an attempt to devaluate "PROPORTIONALITY" and "TITLE IX," I hope that your money is NOT in this kind of a "de-regulated" bank account. At Moorhead State University, there is no choice in the matter. That money is then drawn out of the account to finance ACADEMIC [Forensics--Speech, etc., etc.] and ATHLETIC [Football, Softball, Basketball, Volleyball, Wrestling, Track, etc., etc.] intercollegiate competitive sports and other institutional activities.

As a result of my Academic Complaint (OCR Case #05-92-2099), the recipient institution was given "technical assistance" by the United States Department of Education to "voluntarily comply" with TITLE IX and other DOE-OCR enforced federal laws.

Despite two officials from Region V's OCR office coming "ON-SITE" to Moorhead, Minnesota on March 24, 1994, the recipient institution did NOT bring up the FACT that they had a "Report of the Task Force on Gender Equity in Athletics" ... provided to the President of Moorhead State University, January 31, 1994 ... that stated:

> "Nearly 63% of our students are women, and traditionally participation in athletics has been at a ratio of approximately twenty-four percent (24%) women and seventy-six percent (76%) men"

making the recipient institution thirty-nine percent (39%) disproportionate.

I really hoped the recipient institution would do the right thing, I waited. Because the institution was not willing to do the right thing .. what was fair .. what was just .. nor even consider the fact that their actions were shaping the lives of future generations, I filed DOE-OCR Complaint #05-94-2116.

Applying just my Athletics case to the organizations, coaches and all of you out there who are opposed to TITLE IX, are you willing to put over 60% of the money into your Athletics' bank accounts and get only 24% of your money back? Are you willing to say that this is a "QUOTA"? Are all of you willing to live by the NCAA definition of "Gender Equity"? That definition infers that you are and will be willing to trade the men's offered programs for the women's offered programs. I guess that means coaches' salaries too! ....../.../...... Rather obviously, you are not! Is it any wonder, so many people are here today!

Before we get too hung up on banking relationships, QUOTAs, and Coaches' salaries though, let's go back to the reason we need TITLE IX. We need not go back as far in time as Eleanor Flexner describes in her book, Century of Struggle, when "*It was almost universally believed that a woman's brain was smaller in capacity and, therefore, inferior in quality to that of a man.*" (pg. [illegible], Flexner, 1975) Nor need we look to when "... Lucy Stone organized a debating society among the women, although they were forced to meet clandestinely in the woods 'with sentinels on watch to give warning of intruders', because even at Oberlin it was considered outrageous for women to practice public speaking." (Women of Ideas, Dale Spender, 1982, pg. [illegible]). We need only go back to the words of Julie Nives of Junior High School #217, New York City, New York, in the year 1971 ... not before I was born, but in my lifetime.

Question:	"Can you tell me what the boys do in gym?"
Julie Nives:	"The boys do exercises. They play basketball. They can go out when it is warm, which the girls are not allowed to do. They play handball. Baseball. They have certain teams after school for just baseball, basketball, track teams, which girls do not have."
Question:	"Have you asked to do any of the sports which the boys do?"
Julie Nives:	"We asked for basketball. They said there wasn't enough equipment. The boys prefer to have it first. Then we will have what is left over. We haven't really gotten anywhere."

"THEN WE WILL HAVE WHAT IS LEFT OVER ... WE HAVEN'T REALLY GOTTEN ANYWHERE." Complaint "Settlement Agreement for OCR Case #05-94-2116," which I filed states:

> "... by the conclusion of the 1994-95 academic year women will constitute at least 40% of the participants in the University's intercollegiate atheltics program and by the conclusion of the 1995-96 academic year women will constitute at least 51% of the participants in the University's intercollegiate atheltics program."

I am here to say -- if there is no TITLE IX, "THEN WE WILL HAVE WHAT IS LEFT OVER. WE HAVEN'T REALLY GOTTEN ANYWHERE!"

TITLE IX exists to correct years of historic discrimination -- not only in Athletics, but also in Academics.

The kind of arrogance that says discrimination needs no remedy is the same kind of arrogance, disregard for the law and contempt for the civil rights of others that I've seen every day from the recipient institution for over three years ... since before calling the Region V., OCR office in Chicago, Illinois. The kind of arrogance that makes a press release seventeen minutes (17 min.) after OCR faxed the Athletic "Settlement Agreement" for OCR Case #05-94-2116 to me stating, ... and I quote:

> "'This is a university whose heart is in the right place,' said MSU President Roland Barden. .... Barden noted that only a few colleges and universities are expected to be in total compliance with Title IX by 1997, the deadline that the OCR office imposed on MSU."

FACT: All federally funded colleges and universities are expected to be in compliance with TITLE IX of the Education Amendments of 1972.

FACT: My school came to an agreement with OCR because they were, by their own "Report of the Task Force on Gender Equity in Athletics," thirty-nine percent (39%) disproportionate.

FACT: You don't get to be thirty-nine percent (39%) disproportionate through a history and continuing practice of program expansion or by fully and effectively accommodating the interests and abilities of the "under-represented sex."

FACT: It shouldn't take a complaint filed with the Department of Education, Office for Civil Rights to put a recipient institution's "heart in the right place" and comply with the federal law, which is the reason they received at least 5.8 million dollars ($5.8 million) from the federal government according to the fourth quarter of fiscal year 1991 figures. (A fact revealed in the FOIA documents of OCR Complaint #05-92-2099.)

Unfortunately, Moorhead State University is not alone with this kind of arrogance. This is the same kind of arrogance that will spend more on expert witnesses to fight TITLE IX, than it will cost to provide the opportunities. Now, I know what you're thinking: "BROWN believes they are right!" I've been told this by a reliable source. Well, NEWSFLASH, in 1954, forty years (40 yrs.) ago, another BROWN Case was fought ... and they believed they were right, too! ... about what? DISCRIMINATION, .. and there was an Attorney General's office that believed they were right! Just like in my cases ... there's an Attorney General's office; and, you know what? THEY BELIEVE THEY ARE RIGHT!

In fact, in the majority of the discrimination cases, whenever a public institution is challenged, there is an Attorney General's office and invariably ... THEY ALL BELIEVE THEY ARE RIGHT!! .. in Alabama, in Arkansas, in Mississippi, in Texas, in Kansas, in South Carolina, in California, in Pennsylvania, in Virginia, in Colorado, and in Minnesota ... THEY ... ALWAYS ... ALL ... BELIEVE .. THEY .. ARE .. RIGHT!

You know, instead of this honorable Committee looking into new and exciting ways to "shoot down" and "gut" TITLE IX, or show the recipient institutions how to do the least for the under-represented and historically discriminated against, I think this Committee should make HISTORY! Find an Attorney General's office that believes ... THEY ARE WRONG!!?!!

Currently the President of Moorhead State University is again receiving counsel from the Attorney General's office of the State of Minnesota, because under the Family Educational Rights and Privacy Act (FERPA), I have challenged the recipient institution's DOE-OCR, TITLE IX, Academic intercollegiate competitive Forensics Team response for Case #05-92-2099 .. an education record, specifically related to myself, as a class member .. team member .. and as a Pi Kappa Delta (Speech Honor Society) member. I am requesting specific FERPA amendments and deletions to what I have counted as being over one-hundred (100) inaccuracies or misleading statements in the recipient's thirteen page (13 pg.) federal DOE-OCR TITLE IX response. And you know what ... I'm sure, ... THEY THINK THEY'RE RIGHT! The only problem is, I can prove the INACCURACIES and MISLEADING statements with THEIR OWN RECORDS!!

Among the recipient institution's inaccurate material facts are:

- While not requested by OCR, the institution provided three years' team budgets in which two out of the three years are FALSE, according to: .. THEIR OWN RECORDS.
- The institution provided a separation of funds by gender .. to the last dollar .. male and female. When examining the institution's own "Travel Approval/Advance Request" forms, projected expenses and/or actual costs are not separated blocks of funds on the basis of gender or singularity. Nor has the recipient institution produced even one receipt in which costs/expenses were separated on the basis of gender or singularity.
- The institution testified .. in print .. to a "Selection Criteria" stating that it was used in the years 1989-1990, 1990-1991 and 1991-1992. I have my copies of the "MOORHEAD STATE UNIVERSITY FORENSICS TEAM -

GUIDELINES" from 1989-1990 and 1990-1991, which in each case is a single page document. The "Guideline 2, p. 6" .. "Vehicle and Financial Constraints (Restraints) Criteria" alleged wasn't even written .. printed .. nor did it even have distribution until the Fall Quarter of the academic year 1991-1992, according to: THEIR OWN RECORDS.

- In that year (1991-1992), when this alleged "Selection Criteria" WAS finally in printed existence, its very utilization and explicit application was contingent and dependent upon certain SPECIFIC limiting conditions --

"If VEHICLE and FINANCIAL constraints REQUIRE a limited team size, .."

In 1991-1992, the "Fiscal 92 Moorhead State University Accounting System Report" .. for .. "Account #3-34306" ... "Forensics" shows a "CARRY FORWARD" of one-fifth of the entire, annual TEAM BUDGET, according to: THEIR OWN RECORDS. (MSU Business Office)

- The institution's response alleged there were NINETY-TWO students participating in Forensics during 1989-1990 (31 F's and 15 M's) and 1990-1991 (31 F's and 15 M's) that I was one of; and, wherein I was rated and compared by the alleged "Selection Criteria" aforedescribed that DIDN'T EXIST. If one were to count each students' rating and comparison as one inaccuracy, the institution's response would have 92 inaccuracies and/or misleading statements in just three pages!

Additionally, in 1989-1990, I, personally, have the wrong number of tournaments, I am not attributed as having "d. consistent high placing at tournaments "; whereas males with fewer trophies met component "d." of the institution's alleged criteria.

One male in 1989-1990 meets components "a. consistency of rehearsals" and "b. consistency of participation" of the alleged "Selection Criteria" with only two tournaments prior to the AFA National District Qualifier; while over 30 females during 1989-1990, 1990-1991 and 1991-1992 with the same number of tournaments or more could not meet components "a." or "b." of the alleged criteria.

And .. NEWSFLASH .. a classmate (SPCH 010) and Forensics team member was given access to three years (3 yrs.) worth of classmates and/or team members records; as well as 301 Minn Kappa Chapter of Pi Kappa Delta members records, in order to attest with her signature for the recipient institution the federal response was "accurate" and "based on available records" ... THEIR OWN RECORDS ... thus, violating the privacy rights of what may be over 400 people. ... A KIND OF ARROGANCE !!?!!

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So for all of you that complain about the OCR hassle, that OCR checks the ACCURACY of these figures as to participation rates, assessment of interests and abilities surveys and federal complaint responses to ensure that monitoring and compliance are ruled on the basis of "accurate records," I say to you what OCR has said to me ... *"We have no subpoena power and we take no sworn testimony"* ... which most of you that have had complaints filed against your institutions already know. I've spoken to complainants from across the country and one of their greatest frustrations is the INACCURACIES and ever-changing nature of the numbers.

The Athletic Director of Moorhead State University specifically told me during an audio-taped conversation that the participation rate was 60% male and 40% female; when she was a member of the "Gender Equity Task Force" that reported to the institution's President the participation rate was 76% male and 24% female. What's 16% here or there, RIGHT? Maybe BROWN or Colorado State University would like to discuss that?

Relative to "interests and abilities surveys" conducted by this same recipient institution, our conversation brought forth stated "INTERESTS" of females' surveyed that weren't even mentioned in the "Gender Equity" Task Force Report's survey of "interests and abilities." I have both the tape recording and I have the Task Force Report ... the RECORD just doesn't match!

The SABC Chairperson, who told me, prior to my filing DOE-OCR Case #05-94-2116: *"Everytime the men get $3,000, the women get $3,000."* Of course, it wasn't true, but it gave me another source to find the actual numbers.

So, I'm here to say that recipient institutions will provide false "material facts" in order to attain compliance with TITLE IX ... I am living proof! Recipient institutions do not need to be given any new and specific ways to come up with "false material facts" or create new "loop-holes" in the law from this Committee to show compliance in relation to "continuing history and practice" or how they are "fully effectively accommodating the interests and abilities" of the "under-represented sex." They are fully capable of constructing their own "strategies" and compliance "schemes" reached with the full and complete knowledge, aid and cost-free assistance of their Attorney General's offices .. and remember, THEY BELIEVE THEY ARE RIGHT!

"Proportionality" is the only true form of accountability to measure the real bottom line.

Relative to the OCR's right to accurate records matter? I say, BUNK! OCR does have "Access to Sources of Information" compliance rules and 18 U.S. Code §1001. Every recipient institution knew about these laws, when they signed up for funding. These are not new federal laws.

In fact, much of the "supposed" budgetary constraints in providing athletic opportunities could probably be decreased at Moorhead State University by just publishing their book, "Over 100 Inaccuracies Toward Compliance with Title IX."

No one really understands the gravity of this entire situation, until they are a student-complainant trying to amend their "educational records" ... especially when there are ONLY "Fifty Ways to Leave Your Lover".

This institution is so bad, they even stated to the Minnesota Department of Human Rights, when describing males on my team oogling "Playboy" magazines in the Forensics team's State-owned van traveling down the federal highway ... *"written articles from Playboy are considered a legitimate resource material in forensics."* One of the social activities of my department included "SEX IN THE PIT MONTH" complete with the "POSITION of the DAY"!!! Auctioning off the poster, signed personally by Dr. Ruth Westheimer, could also bring more "claimed" needed funds; even though, I'm sure Dr. Ruth did not know what the poster was for ... let alone its possible value in support of "Gender Equity."

This brings up the final point of my three years. First, recipient institutions can and must be forced to provide accurate responses upon which compliance is ruled. Secondly, recipient institutions need not choose to implement TITLE IX by eliminating opportunites for anyone!

The United States Department of Education, Office for Civil Rights can and must enforce the law by holding institutions who provide "false material facts" accountable to the United States Department of Justice where they can be tried under 18 U.S. Code §1001, which states:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fradulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fradualent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both."

This form of enforcement places the consequences for action where they belong. Currently, institutions know that they will never loose their federal funds ... because no institution ever has. Pulling federal funds only hurts students -- not the institution' unwilling to comply with the law. These facts are perhaps why OCR is so reluctant to take compliance complaints to the next level. It should not take repeated complaints to the OCR office before recipient institutions are treated the same way as "repeat offenders" are treated in society.

Compliance with TITLE IX does not have to mean the loss of oppurtunity for anyone. When I, as a student, could not live under or tolerate the hostile environment and denial of opportunities at Moorhead State University, I left and went to North Dakota State University, who was, also, being investigated and monitored relative to TITLE IX Athletic discrimination. Some of you, who follow Division II Athletics, may be aware that NDSU has consistently been termed a "Power House" in Football .. National Division II Champions several times over. NDSU is and has also been the Division II National Women's Basketball champion several times over.

Ten years ago, if I would have said that over 8,000 people would come to watch the Division II, Women's Basketball Championship game in a community of 75,000 people, many of you would have laughed. My mother and I were there for that day. Tears came to my eyes as Coach, Amy Ruley, and the Bison Women's Team lifted the Division II National Championship trophy into the air. During the course of the game, little girls swept the basketball floor over the breaks. It all seemed an appropriate part of our journey. My mother looked at me, pointing to those young women and said, "Look, Marg, they are what the last three years has been about. They are the future."

NDSU, my alma mater, again brought tears to my eyes and my support when they stated they were going to raise the money to be in TITLE IX compliance ... and ... THEY WERE NOT GOING TO ELIMINATE OPPORTUNITES FOR ANYONE! I am behind institutions with this philosophy all the way. There are many schools out there trying to do the same thing. Proud, but not arrogant .. humble and hard-working. They are the heros .. not those willing to fight opportunities for females or eliminate opportunites to attain complaince. They are willing to work for it everyday .. in their Press Releases .. on their TV commercials .. at their public appearances .. and .. in their constant efforts for improvement of their private academic, athletic and everyday institutional operational image.

I ask this Committee to extend a special commendation to these institutions .. institutions where Athletic and Academic excellence has no sex .. just providing training and a way of life for everyone.

I don't know when the specific moment occurs that someone looses interest or belief in their ability. Maybe it's the day when as a young girl, not yet a teen, chosen to play a child in a play at Moorhead State University, is told: *"Men are superior!"* or the day the female High School basketball player looked up in the gym and saw the poem ... "That's My Boy," "Please don't curse ..." or dressed in a bathroom instead of a locker room; paid for their uniform, meals and lodging unlike their male counterparts, just to compete.

I don't know when each person is made to feel they don't matter ... they are inferior. It is a kind of training and life-long lesson that no one should ever learn. I know when it happened to me and I'm here to say ... when it happened at MSU, it was wrong! When it happens nationwide, it is wrong!

For there to be an inferior .. there must be a superior. No one sport should feel they are so superior, they need exclusion from the TITLE IX equation .. or .. they need special treatment under TITLE IX.

When we talk about eliminating TITLE IX, the Department of Education and Affirmative Action, it is just as wrong! Just because our "Ship of State" leaks from some small hole in the bow, that's no reason to chop "gapping" holes in the stern to let the water out. Yet, the talk continues about eliminating TITLE IX, Affirmative Action and the Department of Education ... that is just as wrong as what happened to me. I started this journey to ensure that what happened to me would never happen to anyone ever again .. that no one would be denied an opportunity because of their sex.

I, therefore, plead with Congress, once again ... please, do what is fair, what is just ... and look at how the lives of future generations will be shaped.

The soccer team that MSU will field next year, due to the OCR agreement, will come one year too late for Female #17, who played the sport for eight years prior to college. The swim team in the OCR agreement will come too late ... years after my Junior High, High School and A.A.U. competition days, ... but you see, I was a distance swimmer and I am not content for someone else to "HAVE WHAT IS LEFT OVER." Let's not stop ... "WE HAVEN'T REALLY GOTTEN ANYWHERE!"

Rest assured, whenever I swam .. no matter how tired I was .. no matter what the lap counter read .. if the race was going .. I never stopped. I will be back, just as long as there is discrimination. I CAN .. and .. I WILL ... GO THE DISTANCE .. WITH ALL DELIBERATE SPEED.

Thank you.

Margaret A. Jakobson

May 9, 1995
Date of Hearing

Additional Information or Inquiries
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806 Main Avenue
Fargo, North Dakota 58103
Telephone: [701] 232-2772

* * *

SABC CRITERIA:

Nature and Scope.

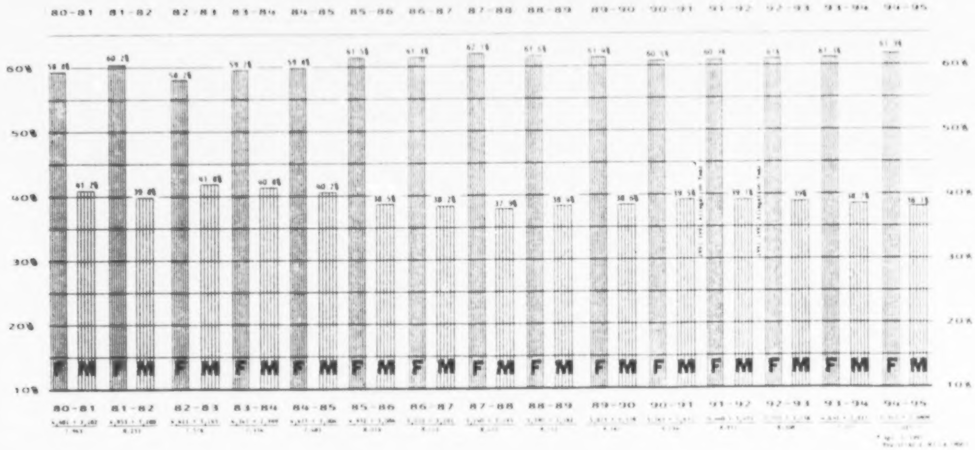
" ... shall be to provide ... "

[a.] " direct involvement of ... and ... "
[b.] " direct benefits to ... "
[c.] " a SUBSTANTIAL NUMBER of ... "
[d.] " ... STUDENTS. "

MOORHEAD STATE UNIVERSITY

TOTAL UNDERGRADUATE ENROLLMENT BY GENDER

1980-1981 through 1994-1995



Anne Goodman James
Athletic Department
Northern Michigan University
1401 Presque Isle Ave
Marquette, MI 49855

cscaa
College Swimming Coaches Association of America

Bob Boettner
Executive Director

May 12, 1995

Rep Howard McKeon, Chair
Sub committee on Postsecondary Education and Training
2181 Rayburn, HOB
Washington , DC 20515-6107
Attn Kathleen Gillespie

Dear Congressman McKeon

Statement of Position on Title IX
from
College Swimming Coaches Association of America

The College Swimming Coaches Association of America represents both men's and women's swimming on all collegiate levels We have a membership of approximately 700 coaches, who, in turn represent thousands of student-athletes

First of all, we believe in Title IX and its intent to improve opportunities for the treatment of women in athletics We are, however, concerned about the unintended consequences which have developed through collegiate institution's response to its enforcement (finally!) in recent years, specifically the loss of many men's non-revenue sports teams (such as swimming, gymnastics and wrestling) on the collegiate level

The current practices within many institutions of higher education in their efforts to begin to comply with Title IX are not consistent with the intent of the law Women's opportunities are not being increased a great deal because "proportionality" is being achieved, in many cases, by dropping sports for men rather than adding sports for women (or a combination of both) And isn't increased opportunity what women have been fighting for and what Title IX is all about? I feel that we are losing sight of that goal in order to achieve "equity," even if it means less for all involved It is like complying with the letter of the law but not the intent

Here are some examples of the kind of action being taken in swimming, 40 Divisions I and II men's programs have been dropped in the last ten years During that time, there was still a

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net loss of three women's programs In 1976, men's gymnastics had programs at 138 NCAA institutions They now have only 31 left Wrestling has lost 120 programs in the last 10 years

While a number of factors are involved in these decisions, many recent examples have cited gender equity as the primary reasons for the action UCLA dropped men's swimming and diving in 1994, the University of Illinois dropped men's swimming in 1993, the University of Arkansas is phasing out men's swimming 1993-1996

As the result of a Title IX complaint and Office of Civil Rights Review, Ferris State University dropped men's swimming, wrestling, cross country, track and baseball, and women's swimming

In 1994, Clemson University announced it would be dropping men's swimming, but upon further review, it decided instead to add softball for women and maintain men's swimming This solution if preferred because it benefits both women and men

OCR is correct in their strong enforcement of the issues of the 13 areas of treatment of the under represented gender, as there has been a great deal of discrimination in the treatment of females in athletics However, the emphasis on the "proportionality" rule for participation opportunities needs to be enforced for educational institutions at the elementary, junior high and high school levels before it is feasible to achieve a balanced representation of females and males in collegiate athletics Unless those opportunities are available for young females, the interest will not be there in college women

There are some sport groups that are promoting the idea that "proportionality" does not make sense because women are not as interested in sports We no not support that thought We believe that the current level of interest in participating in athletics by college age women (which, admittedly, is currently less than that of men) is due more to the lack of athletic opportunity for females of younger age, rather than to some innate reason due simply to gender The "proportionality" test should be enforced currently at the high school and middle school levels It should not, however, be the landmark of compliance in providing opportunity at the collegiate level until it has been enforced for 4 to 6 years at the secondary levels That way the level of interest has a chance to develop in future college age women, and I do believe that with these early opportunities women's interest will grow to a level comparable to that of men (For example, in the 1970's when Title IX was first starting to be enforced, girls participation in interscholastic sports grew from 8% to 35%, and to 30% in intercollegiate sport)

While the proportionality rule will prove feasible in a few years, in the meantime the "meeting the interests and abilities" method of compliance makes more sense at the present time for colleges However, the criteria for that prong of the three part test needs to be much more clearly defined before it will work effectively (During a recent OCR review at our institution, despite repeated requests for the specifics of "meeting interests and abilities" as required in our settlement, no guidelines were given Because of the vague direction given by our OCR regional office we find it difficult to proceed in an effective manner)

We urge OCR to take a position of not eliminating men's sports to achieve a balance of opportunity. Obviously, thus hurts men's "minor" sports, but it also does nothing to help women.

The question is how do we solve the issue financially? In most cases there will not be new money available to start programs for women, forcing us to look within existing budgets. As Donna Lopiano of the Women's Sports Foundation said, "Title IX is about fairly sharing limited financial resources. Schools must exercise restraint in controlling athletics expenditures."

Respectfully,

Anne Goodman James
President

AGJ js

cscaa
College Swimming Coaches Association of America

Bob Boettner
Executive Director

Position Statement on Title IX

1 CSCAA represents women's and men's swimming at all collegiate levels

2 We believe in Title IX, but are concerned about the unintended consequences (i e the dropping of many men's programs in swimming wrestling, gymnastics, etc)

3 Dropping men's teams also hurts women by limiting increased opportunities

4 A new "underclass" has been created (i e men's non-revenue sports)

5 If proportionality is to be the landmark of compliance for participation, it needs to be enforced at the secondary level for 4-6 years before it is feasible to make it work at the collegiate level
We do not support the premise that females are less interested in sports. The lower level of interest currently seen in collegiate women is due to the fact that they had less opportunities for participation in secondary school than did boys

6 OCR needs to more clearly define how to comply with the "interests and abilities" test for opportunities

7 We support increasing opportunities for women, not eliminating programs for men

8 We urge college CEO's and athletic directors to address the financial concerns created by Title IX by more eqitably sharing the available resources (rather than dropping entire programs)

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CSUB

Department of Athletics & Physical Education
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805/664-2188

15 May 1995

Ms. Norma Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
Office of Civil Rights
300 C Street SW, Suite 5000
Washington, D.C. 20202-1100

Dear Ms. Cantu:

Unfortunately I did not get a chance to personally meet you at May 9th's Subcommittee Hearing, "Title IX Impact on Intercollegiate Athletics." Hopefully we can meet in the future.

I have two requests, but first some background.

In response to the growing number of girls participating on boy's high school wrestling teams in California the last three years and the growing number of women participating in US Wrestling's Women Freestyle Championships for the past seven years, I added 14 women to my NCAA Wrestling Squad list at California State University, Bakersfield (CSUB), in accordance with NCAA Bylaw 18.02.2, this February.

This was accomplished despite the fact that the university administration, but mainly the athletic director (AD), blocked my efforts for 13 months. The AD and a California State Universities attorney used OCR Regulations to discriminate against women participating in contact sports; even though, last September; the CSUB Athletic Advisory Committee recommended that women be allowed to join the wrestling team. Section 106.41, paragraph "B", of the OCR Manual states that educational institutions may or may not prevent women from participating in contact sports.

Many of my colleagues are trying to expand wrestling opportunities for women and are working toward getting the 40 institutions required to make Women's Freestyle Wrestling an NCAA sport. The National Wrestling Coaches Association was not contacted by the NCAA when "emerging women's sports" were being developed. Thus, strange as it may seem, conservative, male coaches of the oldest and most traditional of male sports are being asked by World Freestyle Champions, such as Tricia Saunders, to continue the growth of their sport.

I request that you change the OCR Manual to accommodate women participating in contact sports as some of my colleagues are being thwarted, just as I was, by administrators who are using OCR Regulations to discriminate. These coaches are not in a position to fight for women's rights because of the cost of legal action and the security of their jobs.

Secondly, I request that you send me a letter stating that I can count my female wrestlers as "countable female athletes." Although the NCAA told me the females are countable, my AD states that I cannot count them. They train (run, weights, technique and scrimmage) as hard as the males. They competed at the Sunkist, Country Classic, California State and National Women's Freestyle tournaments (five placewinners including a national champion). They wrestled exhibition against women from other schools and against "outside competition" at our dual meets which is "countable NCAA competition." In addition, they may compete against the men for the number one position on the collegiate team. My president told our AD that the women should be "countable squad members" as one cannot use separate rules for women and men as long as they belong to the same team.

Obviously, one of the messages given at the May 9th Subcommittee Hearing was to bring up the participation level of women athletes. I was encouraged to hear you state that your office will help and, as promised in your testimony, I look forward to your cooperation and timely response to my two requests.

Thank you!

Sincerely,

TJ Kerr
President, NWCA
Head Wrestling Coach
California State University, Bakersfield

cc: Subcommittee on Postsecondary Education, Training and Lifelong Learning of the Committee on Economic and Educational Opportunities

Congressman McKeon
Congressman Gunderson
Congressman McIntosh
Congressman Goodling
Congressman Petri
Congresswoman Roukema
Congressman Riggs
Congressman Funderburk
Congressman Souder
Congressman Williams
Congressman Andrews
Congressman Reed
Congressman Roemer
Congressman Green
Congresswoman Woolsey
Congressman Romero

PRESS CONFERENCE PRESENTATION
HEARING IN THE ECONOMIC AND EDUCATIONAL OPPORTUNITIES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC
MAY 9, 1995

DRAFT

Good afternoon. I'm Clay McEldowney, and I'm from Dick Zimmer's Congressional district in NJ. I'm a licensed professional engineer and am president of Studer and McEldowney, consulting engineers in Clinton, NJ. I'm here today because I care deeply about the future of amateur wrestling and because, as an alumnus and chairman of the Friends of Princeton Wrestling, I wish tell you how Title IX has affected the varsity wrestling program at Princeton University.

The Friends of Princeton Wrestling includes over 650 alumni who wrestled while undergraduates or who otherwise believe in the importance of wrestling at Princeton. Our group includes such people in the public service as Frank Carlucci '52, Don Rumsfeld '54 and Jim Leach '64. Wrestling was an important part of these men's scholastic experience. Like all wrestlers they take great pride in their sport which is open to men, of whatever size, whatever economic status and whatever racial or ethnic background. None would have attended Princeton if the University hadn't offered wrestling as a varsity sport.

Princeton's guiding philosophy when it comes to athletics is, as with other members of the Ivy League, to improve and foster intercollegiate athletics while keeping the emphasis in athletic competition in harmony with the educational purpose of the institution. Princeton wrestling has been nationally recognized for its level of success - without athletic scholarships - while maintaining high academic standards.

Founded 90 years ago, Princeton wrestling boasts an all time record of 581-369-26 in 88 seasons, with 11 Ivy League championships, 50 individual EIWA titles, and 3 EIWA team titles. Nationally, it has one NCAA champion and in the last 30 years had 4 finalists, 5 all-Americans, and team finishes of 14th and 16th places. Princeton has hosted the National championships twice.

In a letter recently sent to University president Harold Shapiro, Princeton wrestling coach Eric Pearson stated, "Princeton's status in the wrestling world is that of the favorite son. Like any family that holds special pride in its first ever to attend college, wrestling enthusiasts speak with special pride of Princeton's wrestling heritage. Princeton is a founding member of the Eastern Intercollegiate Wrestling Association, the oldest wrestling conference in the country.

Just over two years ago, Princeton's athletic director announced that the University had discontinued the varsity wrestling program effective immediately. Reasons cited for the action included constraints on finances and admissions and that wrestling is "a sport whose elimination would not create gender inequity within the department." In a comprehensive report on athletics prepared late last year by a committee of the University trustees, they stated that a consideration that led to the specific identification of wrestling as the sport to be dropped was "the impact of such a decision on gender equity." It was made even more clear that gender equity was the major reason for dropping the sport when the University refused the Friends' $2.3M offer to endow the entire wrestling program without support from the admissions department, and later, when the athletic director stated, in the undergraduate newspaper, that "the recently cut varsity sport - wrestling and gymnastics - stood little chance of being reinstated because of Title IX." He referred to those cuts as "unfortunate ramifications" of the statute.

In a speech which he recently delivered to the National Press Club, Senator Bill Bradley '65 stated that civil society is found "in churches, schools, fraternities, community centers, labor unions, synagogues, sports leagues, P.T.A.'s, libraries, and barbershops," and is "governed by values such as responsibility, trust, fraternity, solidarity and love." Recent court decisions which have forced colleges to cut wrestling and other men's athletic programs give a cold shrug of civil abdication by emphasizing proportionality and numbers of participants instead of engaging in a moral evaluation of the matter. The issue of varsity wrestling at Princeton and at colleges throughout the country lands squarely within the realm of civil society, and not until it is evaluated in that context will the issue be properly served.

Recent court decisions (and the fear of court decisions) which have forced colleges to cut wrestling and other men's sports have done little or nothing to increase participation in women's sports. Instead they have created ill feelings between competing interests in athletic departments, deprived many student athletes from competing on a college level in a sport for which they prepared almost since infancy, and in many cases actually reduced the overall participation (by men and women) in athletic programs. Red Tape, legal maneuvers, hostility, and the courts have replaced intelligent dialogue, fairness, and common sense in the administration of athletic programs nationwide. It would seem time to re-evaluate Title IX, or at least the current interpretation of Title IX, to more accurately the intent of Congress in passing this legislation. There are far better ways of promoting greater female participation in athletic programs than the forced elimination of male sports.

The proportionality rule of Title IX is yet another example of the tension between the pursuit of equality and the preservation of liberty. As George Will, PhD. '68 stated in his April 2 column, "attempts to achieve by government coercion that elusive, because illusory, goal of a 'level playing field' inevitably produce instead an exponential growth of prohibitions and regulations that shrink the individual's sphere of sovereignty."

\wrstesty.2nd

TESTIMONY OF THE NATIONAL WOMEN'S LAW CENTER, THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, THE AMERICAN CIVIL LIBERTIES UNION, THE FEMINIST MAJORITY, THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, THE NATIONAL ASSOCIATION FOR GIRLS AND WOMEN IN SPORT, THE NATIONAL EDUCATION ASSOCIATION, THE NATIONAL ORGANIZATION FOR WOMEN, THE NOW LEGAL DEFENSE AND EDUCATION FUND AND THE WOMEN'S LEGAL DEFENSE FUND

BEFORE THE SUBCOMMITTEE ON POSTSECONDARY EDUCATION,
TRAINING AND LIFETIME LEARNING
COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES
U.S. HOUSE OF REPRESENTATIVES
ON
TITLE IX AND ATHLETICS

MAY 9, 1995

The National Women's Law Center is pleased to submit this statement on Title IX and athletic opportunity on behalf of itself and the abovesigned organizations. The Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights across the country. The Center focuses on major policy areas of importance to women including education, employment, income security and health care — with special attention given to the concerns of low-income women.

The Center, the American Association of University Women, the American Civil Liberties Union, the Feminist Majority, the Lawyers Committee For Civil Rights Under Law, the Mexican American Legal Defense and Education Fund, the National Association of Girls and Women in Sport, the National Education Association, the NOW Legal Defense and Education Fund and the Women's Legal Defense Fund strongly support Title IX's protection against sex discrimination in athletic opportunity. Title IX has played a vital role in opening

up competitive athletics to America's women and girls, but its promise of equal opportunity is unfulfilled. Title IX remains critical as we progress toward giving our daughters the same access to and benefits from sports as our sons.

The Continued Need for Equity in Athletics

When Title IX was enacted in 1972, women represented a mere 2% of the nation's college varsity athletes and received only 1/2 of one percent of schools' athletics budgets. Fewer than 16,000 college women and 300,000 high school girls played any type of competitive sports at all. Athletic scholarships for women were simply nonexistent. Vast disparities in treatment and facilities characterized men's and women's sports programs.

While Title IX has given women a small but important share of athletic opportunities, we still have far to go before we achieve equity in athletics. For example:

- A 1992 NCAA survey shows that women in Division I colleges, while representing over half the student body, receive less than one-third of athletic scholarship dollars, one-sixth of recruiting dollars and one-fifth of overall athletic budgets.
- Women have access to only 33.6% of Division I colleges' varsity athletic slots.
- The institutional average expenditure for athletic recruitment in Division I schools is $139,000 for men and only $28,840 for women (NCAA 1992).
- A 1989 study shows that since the enactment of Title IX, two new athletic dollars were spent on men for every one new dollar spent on women (Raiborn Report).
- Each year, male athletes receive approximately $179 million more in scholarship monies than female athletes (Women's Sports Foundation).
- In 1993, NCAA member institutions had almost twice the number of male athletes as female athletes: 187,041 men compared to 99,859 women (NCAA Participation Report).

The disparity between men's and women's athletic opportunities cannot be explained by lack of interest on the part of girls and women. In the first four years after Title IX's passage, women's participation in college athletics skyrocketed by 600% and shows no signs of dropping off. In 1994, the number of high school girls playing competitive sports climbed to 2.12 million with over 127,000 new female athletes entering sports programs in 1993 alone. The desire to play sports is not what is missing for women -- it is the opportunity to do so, particularly at the college level.

What is Title IX?

Title IX was enacted in 1972 as part of the Education Amendments to the Civil Rights Act of 1964 and serves as the major statute prohibiting sex discrimination in education. It states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.

While Title IX's scope extends well beyond athletics, it is the principal form of protection against sex discrimination in college and high school sports.

The Department of Health, Education and Welfare (the predecessor to the current Department of Education), the agency responsible for enforcing Title IX, issued regulations in 1975 which were subsequently approved by Congress. These regulations require analysis of three basic areas to determine whether an athletics program violates Title IX: the allocation of participation opportunities, athletic financial aid, and all other athletic benefits.

and opportunities.

In order to determine whether a school has violated Title IX by discriminating in participation opportunities, the Department of Education applies a three-part test. This test gives schools three independent ways to comply with Title IX: (1) provision of participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments; or (2) demonstration of a continuing history of program expansion for the underrepresented sex; or (3) full and effective accommodation of the interests and abilities of the underrepresented sex. A school can demonstrate compliance with Title IX if it can satisfy any one of the three parts of the test. It is therefore simply incorrect to characterize the test as one that turns exclusively or inordinately on proportionality, as some have charged.

Courts addressing Title IX compliance have all adopted the Department's three-part test and applied it consistently. When schools lose Title IX cases in court, it is because they were unable to show proportionality, continued expansion or accommodated interest and therefore failed all three parts of the test. Every Title IX case argued in court has resulted in a victory for the plaintiff-athletes, which provides clear evidence of the continuing problem of inequity in athletic programs.

Title IX Has Opened Doors For Women

Title IX has made a dramatic impact on the participation of women and girls in competitive athletics. The number of college women playing intercollegiate sports has gone from 16,000 in 1972 to over 158,000 today, with women now representing 35% of college athletes nationwide. During the four years between 1989 and 1993, the number of participants in college-level women's sports increased by 10,000. At the high school level, the numbers are even higher: 2.12 million female athletes in 1994 with a 127,000 new participant rate in 1993 alone.

Women's teams are also moving into the media spotlight, bringing recognition and revenue to their schools as well as excitement to their fans -- the University of Connecticut's high profile NCAA champion women's basketball team is a recent example. Another example is Colorado University's women's basketball team, which averages over 4,000 fans a game and is anticipated to generate almost $200,000 this year. At the University of Utah, the women's gymnastics team brings in more than 10,000 fans on average to its meets and has been national champion nine times. A 1990 study shows that 13 women's teams in Division I of the NCAA bring in $1.3 million or more each year in revenue and 26 teams bring in $450,000 or more -- without large recruiting budgets or years of publicity and tradition to help them. Undoubtedly, as more women's teams receive institutional support on par with men's teams, success stories like these will multiply.

Title IX has also been instrumental in increasing opportunities for women in the Olympics. With sports such as track and swimming, opportunities to compete in high school and college have provided women with the training they need to excel in their sport. While the number of Olympic events for women still lags behind those available to men, the 1996 Olympics in Atlanta will host a record 3,780 female Olympians. Women's soccer and softball will premiere as medal sport events in 1996, and women's ice hockey will be added in 1998. Given the outstanding performance of America's female athletes in recent Olympic Games, women's athletics can look forward to increased visibility as women bring home the gold.

Sports Are Important For Girls & Women

It is clear that women can make a tremendous contribution to sports: largely as a result of the doors opened to female athletes by Title IX, women won nine of the eleven American medals at the 1990 Winter Olympic Games and nine of the thirteen American medals at the 1994 Winter Olympic Games. In addition, competitive sports have much to offer the athletes who participate in them:

- The availability of athletic scholarships dramatically increases young women's ability to pursue a college education and to choose from a wider range of schools. Currently, women receive only one-third of the available athletic scholarship dollars, giving them the type of educational access and opportunities that male athletes enjoy twice as often (NCAA 1992).

- Athletes and coaches cite a long list of personal skills developed through competitive athletics, including an ability to work with a team, to perform under pressure, to set goals and to take criticism. Playing sports also helps young women develop self-confidence, perseverance, dedication and "the competitive edge."

- Studies show that young women who play sports have higher grades than non-athletes and are more likely to graduate from high school (Women's Sport Foundation). Young female athletes also are more likely to go on to a four-year college than non-athletes.

- The health benefits of regular and rigorous physical exercise are extensive. In addition to the benefits enjoyed by both sexes, such as decreased chance of heart attack, stroke and back problems, a 1981 study shows that women who participate in sports lower their risk of breast cancer by 40-60%; this finding was confirmed by a

1994 study (Frisch 1981, Bernstein 1994). Playing sports also lowers women's risk of osteoporosis, a bone disease which disproportionately affects older women. Moreover, girls who play sports are 92% less likely to get involved with drugs and 80% less likely to have an unwanted pregnancy (Women's Sport Foundation).

- There are important psychological benefits to be gained from sports as well: young women who play sports have a higher level of self-esteem, a lower incidence of depression and a more positive body image (Women's Sports Foundation).

Conclusion

Title IX mandates that the opportunity to play sports should not be conditioned on gender, and that the nation's female athletes have the same rights to athletic opportunity as its male athletes. Under Title IX, women and girls have made significant progress toward achieving equity in athletics and benefitted greatly from participation in competitive sports. Limiting Title IX's protections now would mean stopping the clock on women's athletic opportunity and denying young women the level playing field they deserve.

COLLEGE FOOTBALL ASSOCIATION

Charles M. Neinas, Executive Director

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Chairman of the Board
Chancellor
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C. William Byrne
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6688 Gunpark Drive, Suite 201, Boulder, CO 80301-3339 (303) 530-5566 FAX (303) 530-5371

May 18, 1995

The Honorable Howard P. McKeon
United States House of Representatives
Washington, D.C. 20515

Dear Congressman McKeon:

I appreciated the opportunity to share with the House Subcommittee on Postsecondary Education, Training and Life-Long Learning some of our concerns related to Title IX and the activities of the Office for Civil Rights.

Your interest in the subject is appreciated and I previously had an opportunity to meet with Bob Cochran of your staff as well as Kathleen Gillespie of the committee staff.

Please find enclosed a copy of the letter that I forwarded to Norma Cantu. There is ongoing misinformation, but the enclosed athletic participation study exemplifies steady improvement in the expansion of opportunities for women while at the same time there are decreasing opportunities for men.

It is our opinion that it would be appropriate to review the Title IX Policy Interpretations and provide clarification to prongs two and three of the compliance test and reduce the courts and OCR from relying on the proportionality test.

Hopefully you and your committee will continue to give attention to this issue which is of considerable importance to colleges and universities that are attempting to accommodate athletic opportunities for both men and women in a reasonable and practical manner.

If I may be of service to you and your committee, I trust you will not hesitate to contact me.

Thank you again for your interest.

Sincerely,

Charles M. Neinas
Executive Director

CMN:kst
Enclosures

cc: Kathleen Gillespie

CFA

COLLEGE FOOTBALL ASSOCIATION

Charles M. Neinas, Executive Director

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May 17, 1995

Norma Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
Switzer Bldg., Room 5000
330 C Street S.W.
Washington, D.C. 20202-1100

Dear Ms. Cantu:

The purpose of this communication is to comment on the statement you submitted to the House Subcommittee on Postsecondary Education, Training and Life-Long Learning on May 9, 1995.

On Page 10 of your statement you state "During the past decade, as well, there has been increased participation by men in sports other than football and basketball, i.e., or in the 'non-revenue producing sports' [see Exhibit 5, Participation in Men's NCAA Sports Other Than Football and Basketball]."

The statistics that you cite, which were obtained from the NCAA, are extremely misleading. The NCAA did not reveal that its membership increased by 76 institutions since 1990. The enclosed chart provides a more accurate assessment of what has transpired in men's athletics during the past decade. [Source: National Collegiate Athletic Association Participation Statistics Report.]

During the period of 1984-1985 to 1993-1994, the NCAA membership increased by 101 institutions. During that same period of time, however, the actual participation by men in intercollegiate athletics decreased by 5.7 percent.

Please note that of the 17 "non-revenue" sports listed, the only sports in which there has been an increase in participants are baseball with 99 additional teams and lacrosse which added 26 teams. Men's volleyball also has 25 more participants with one less NCAA member playing the sport. Even in sports in which the number of participating NCAA members has increased (cross-country, golf, soccer, tennis, indoor track and outdoor track), the number of participants decreased.

The size of football squads also decreased and the number of male basketball players declined by six percent, although there are 102 additional men's basketball teams.

The sport of wrestling provides the most graphic example during the period cited. Sixty-one institutions discontinued the sport and the number of participants has been reduced by 2,104.

I have alerted Cedric Dempsey, executive director of the National Collegiate Athletic Association, of my concern and believe it is incumbent upon that organization to provide more accurate information to the Congress and the Office for Civil Rights.

Also in your statement, you refer to our complaint about OCR's treatment of the sport of football and indicate that "OCR policy guidance mandates that it considers the unique aspects of all sports when it assesses compliance with Title IX."

I met with you personally in your office in Washington, D.C., attended the June 16, 1994 meeting initiated by OCR and have exchanged correspondence with you on two occasions attempting to gain a better understanding of how OCR recognizes the unique nature of the sport of football. Perhaps I may be missing something, but to date I remain unconvinced that OCR recognizes the unique nature of the sport that attracts more participants and requires more athletes to play the game.

It is extremely distressing to listen to representatives of the Women's Sports Foundation and other women's advocacy groups claim that opportunities for men, including those that do not receive athletically related financial aid, should be limited for the sake of attaining proportionality. If OCR, as noted in your statement, is committed to providing more opportunities for women without decreasing opportunities for men, those institutions that sponsor the sport of football need more guidance from you.

Representatives of the College Football Association, including its officers and Board of Directors, would appreciate the opportunity to discuss our concerns directly with you and members of your staff so that we may gain a better understanding of OCR's philosophy relative to football in its enforcement of Title IX.

Sincerely,

Charles M. Neinas
Executive Director

CMN/rh
Enclosure

cc Subcommittee on Postsecondary Education, Training and Life Long Learning
CFA Board of Directors
Judith Albino, Chairman, NCAA Presidents Commission
Eugene Corrigan, President, National Collegiate Athletic Association
Cedric Dempsey, Executive Director, National Collegiate Athletic Association

Athletic Participation Study

In the decade from 1984-85 to 1993-94 NCAA membership increased by 101 institutions. During the same period male participation in intercollegiate athletics decreased by 5.7 percent, while women's athletic participation increased by 15.1 percent.

Men	1984-85			1993-94			
	No. Inst.	Ave. Squad	Participants	No. Inst.	Ave. Squad	Participants	% of Change
Total Male Athletes			201,063			189,642	-5.7%
Non-Rev. Sports	See Chart Below		137,252	See Chart Below		125,444	-8.6%
Football	503	98.7	49,621	561	90.6	50,848	2.5%
Basketball	752	18.9	14,190	854	15.6	13,350	-6.0%

	1984-85		1993-94			
Men's Non-Revenue Sports	No. of Institutions	No. of Participants	No. of Institutions	No. of Participants	Change in No. of Institutions	Change in No. of Participants
Baseball	652	22,117	751	22,575	+99	+458 (2.1%)
Cross Country	694	10,720	730	9,850	+36	-870 (-8.1%)
Fencing	67	1,407	45	757	-22	-650 (-46.2%)
Golf	595	7,497	637	7,023	+42	-474 (-6.3%)
Gymnastics	65	1,067	33	492	-32	-575 (-53.9%)
Ice Hockey	124	4,486	123	3,556	-1	-930 (-20.7%)
Lacrosse	144	5,229	170	5,290	+26	+61 (1.2%)
Rifle	88	1,148	46	444	-42	-704 (-61.3%)
Skiing	50	1,125	35	539	-15	-586 (-52.1%)
Soccer	544	15,390	609	15,021	+65	-369 (-2.4%)
Swimming	381	8,575	368	7,551	-13	-1,024 (-11.9%)
Tennis	694	8,389	720	7,530	+26	-859 (-10.2%)
Track, Indoor	453	15,697	493	15,572	+40	-125 (-.8%)
Track, Outdoor	581	20,189	588	18,294	+7	-1,895 (-9.4%)
Volleyball	62	913	61	938	-1	+25 (2.7%)
Water Polo	52	1,114	39	841	-13	-273 (-24.5%)
Wrestling	325	8,572	264	6,468	-61	-2,104 (-24.5%)

	1984-85		1993-94			
Football	No. of Institutions	No. of Participants	No. of Institutions	No. of Participants	Change in No. of Institutions	Change in No. of Participants
Division I-A	105	13,269	106	12,413	+1	-856 (-6.5%)
Division I-AA	87	9,544	115	11,316	+28	+1,772 (18.6%)
Division II	114	10,721	142	11,814	+28	+1,093 (10.2%)
Division III	197	16,087	198	15,305	+1	-782 (-4.9%)
Basketball	752	14,190	854	13,350	+102	-840 (-6.0%)

Women's Athletic Participation by Sport

Women's Sports	1984-85 No. of Institutions	1984-85 No. of Participants	1993-94 No. of Institutions	1993-94 No. of Participants	Change in No. of Institutions	Change in No. of Participants
Basketball	751	11,248	855	11,710	+104	+462 (4.1%)
Cross Country	541	6,573	727	8,610	+186	+2,037 (31.0%)
Fencing	62	686	43	411	-19	-275 (-40.1%)
Field Hockey	251	6,042	214	4,579	-37	-1,463 (-24.2%)
Golf	123	1,135	206	1,670	+83	+535 (47.1%)
Gymnastics	150	2,036	92	1,242	-58	-794 (-39.0%)
Lacrosse	114	3,211	133	2,977	+19	-234 (-7.3%)
Skiing	37	624	35	402	-2	-222 (-35.6%)
Soccer	165	3,967	446	9,446	+281	+5,479 (138.1%)
Softball	493	9,410	646	10,954	+153	+1,544 (16.4%)
Swimming	374	7,647	393	8,050	+19	+403 (5.3%)
Tennis	667	7,764	759	7,356	+92	-408 (-5.3%)
Track, Outdoor	482	10,914	582	13,436	+100	+2,522 (23.1%)
Track, Indoor	358	8,272	489	11,459	+131	+3,187 (38.5%)
Volleyball	649	9,533	810	10,692	+161	+1,159 (12.2%)

Total Participation

	1984-85	1993-94	Percent of Change
Men	201,063	189,642	- 5.7%
Women	91,669	105,532	+15.1%
Total Athletes	292,732	295,174	

[Source: National Collegiate Athletic Association Participation Statistics Report]

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14   Section 1   Monday, May 15, 1995

Playing games with Title IX

If any good can be said to have come from the recent court ruling that Brown University discriminates against women in its athletic programs, it is that it may lead to an examination of the intent of the law Brown supposedly violated and a reassertion of common sense in interpreting it.

In 1992, nine women sued Brown for violating Title IX of the Education Amendments of 1972, which forbids schools that receive federal funds from discriminating against students on the basis of sex.

They based their case on Brown's decision to strip the women's gymnastics and volleyball teams of varsity status to cut costs, even though the school also axed the men's varsity golf and water polo teams.

In a stunning decision that reflects a basic misunderstanding of the intent of Title IX and of human nature as well, U.S. District Judge Raymond Pettine ruled that Brown had violated the law because while 51 percent of its students are women, only 38 percent of its athletes are. According to Pettine, the proportion of women on athletic teams must "mirror" the total proportion of women students. If women students outnumber men students, then women athletes must outnumber men athletes.

Anyone who has ever been to a Super Bowl party knows what's wrong with that logic. While many women are interested in sports and while women participate in increasing numbers, far more men than women make sports part of their lives.

Ironically, Brown University is considered a leader in women's collegiate athletic opportunity: It offers 17 varsity sports for women and 16 for men. But only 338 women participate compared with 555 men. And though the school submitted surveys showing that fewer women than men students were interested in participating, the judge wasn't buying it.

To be fair, Judge Pettine didn't pull the notion of athletic "gender parity" out of his hat. It is one of three tests established by the Education Department's Office of Civil Rights by which schools can prove they are complying with Title IX.

However, the other two tests—showing a growth of women's sports programs over time and proving that the sports program effectively meets the interests and abilities of female students—are vague and were given short shrift in the Brown case.

It's one thing to offer any one of three ways to prove compliance with the law and quite another to make parity the only way, which happened in the Brown decision. If it is upheld on appeal, Congress should take a new look at Title IX, not to repeal it but to clarify its intent and refine its guidelines.

The law's intent was to assure women the same opportunities as men on college campuses, and that is still a valid concern. It was never intended to create a numbers game that inhibits, rather than enhances, campus athletics.

Statement of: Tom Osborne
Head Football Coach
University of Nebraska
May 9, 1995

My name is Tom Osborne, and I have been head football coach at the University of Nebraska for the past 22 years. Prior to becoming head coach, I served 11 years as an assistant coach to Bob Devaney while receiving a Master's Degree and a Doctor of Philosophy Degree in Educational Psychology from the University of Nebraska. My statement to the Committee is as follows:

Thank you for an opportunity to address the issue of Title IX interpretations, which currently have given rise to a great deal of concern among coaches, student-athletes, and administrators in the area of intercollegiate athletics.

There is no argument among members of the College Football Association or the National Collegiate Athletic Association that there should be gender-equity, i.e., women student-athletes should and must have equal opportunity to experience the benefits of intercollegiate athletic competition. There is, however, considerable concern about pressure from various groups on institutions and Congress to use proportionality as the overriding test of Title IX compliance.

The University of Nebraska has long been a leader in the enhancement of opportunities for women in college athletics. Last year Nebraska added women's soccer, at a cost of roughly $350,000, bringing the total of women's sports to eleven, exactly the same as men. All women's programs are funded to the scholarship limits permitted by NCAA legislation. All women's programs have exactly the same access to academic assistance, training table meals, equipment, travel, and coaching as do the men's teams.

It is important to know that excepting the numbers and the expenses of the Nebraska football program, more funds are committed to the women's program than to the men's. More women than men receive athletic scholarships, when football--which allows 85 scholarships under NCAA rules--is eliminated from the equation. There is no women's sport that approaches the numbers required to field a competitive football team.

Currently there are those who are urging that football scholarships and expenditures be reduced and/or men's sports be eliminated so that funds can be transferred to enhance funding of women's athletics. I am sure this was never the intent of Congress when Title IX was passed to bring about equal opportunity for women.

Ignored in the effort to diminish football, is the fact that at the University of Nebraska, for example, and at most major college institutions, it has been the football program that has funded most women's programs and insured the growth of women's athletics. Women's sports generally do much better at schools with major football programs because of a larger revenue base.

At the University of Nebraska we have had a successful "walk-on" football program. We have had two "walk-on" All Americans. Another "walk-on," Mark Blazek, became a football captain and a two-time Academic All American. Twenty four have become All Big Eight Conference players since 1971. These young men would have been denied an opportunity for college football experience if squad sizes had been dictated by how many women students wished to compete in college athletics.

Our football program has made a contribution to the University as a whole as well as to women's and men's non-revenue sports. Since 1982, the Nebraska football program has generated $105,000 for the general scholarship fund at the University--money which is awarded to men and women in the student body who are not athletes. Funds generated by the Nebraska football program, which operates without state or federal tax support or student fees, have enabled the University of Nebraska to build a campus recreation and physical education facility at a cost of $16,000,000 generated primarily from football gate receipts.

On April 21 of this year, the Nebraska football team's national championship celebration at Memorial Stadium raised more than $80,000 for the Love Memorial Library on campus. College football has enabled many universities and colleges to achieve similar contributions to the betterment of institutions and communities.

Reducing college football to a "bare-bones" activity in an effort to enhance women's athletics is not the answer. It wasn't when Title IX was passed, and it certainly is much less the answer today. You will note that Senator Bayh as he sponsored Title IX in 1971 talked about "equal access" for men and women where there is not a "unique facet such as football involved."

Dr. Graham Spanier, Chancellor of the University of Nebraska-Lincoln, had this to say in 1993 when asked about the Title IX "proportionality" movement:

> "First, it unreasonably limits the number of opportunities for men. The second reason is based more on economics: Football and men's basketball foot the bill for all sports at this and many other institutions. At Nebraska, no state support whatsoever--no tuition, no student fees, no state subsidies--are applied for the continued support of intercollegiate athletics. The funding necessary for the continued support of our commitment to gender equity is possible at the university like ours only if we continue to have a successful and well-supported football and men's basketball program."

Dr. Spanier further stated, "Our position at the University of Nebraska-Lincoln is this: Rather than reduce the opportunities for young men, add opportunities for young women and provide an equal number of men's and women's sports at the university. Handle them equitably in all respects, including scholarship stipends and other financial support, access to facilities and university services and overall participation in athletic department programs . . . The approach acknowledges that the current limit of 85 scholarships for football compared with the lower limit in the equivalency sport (i.e., designate one women's sport such as volleyball as an equivalency sport for football) is not strictly proportional. But it is a realistic approach."

Dr. Spanier has also acknowledged the importance of and contributions to the university of the so-called "walk-ons," saying, "We have tried to interest young women to "walk-on" for varsity competition, but despite our best efforts, still about four times the number of men vs. women walk-on."

Noting the "proportionality" argument being raised in recent years, Dr. Spanier said, "Some say that to meet proportionality, we, and nearly every other major college athletic program, would need to eliminate "walk-ons," thereby decreasing the number of men in order to level the ratio between men and women. We feel that solution is unfair to those "walk-on" athletes. Many walk-ons try out for teams with the hope of winning an athletic scholarship. Most compete because they enjoy the sport. To deny them the chance to compete is the wrong solution."

Please note the enclosed participation figures from the NCAA News. You will see that from 1984 to 1993 men participants declined and women participants increased. However, there was a net loss of 5,832 athletes who participated during this period. If proportionality is the only test of compliance used, I can assure you that participation in NCAA athletics will decrease significantly. There are more than 1,000 fewer NCAA Division I football players now than there were four years ago as scholarship squad sizes have been decreased from 95 to 85 for each school.

Opponents of college football maintain that 85 football scholarships exceed what is necessary since pro football teams have fewer numbers. What they fail to recognize is that pro players are already fully developed. Approximately a third of each college squad is still in a developmental stage. Most football players are not able to compete at a Division I level until they get bigger, faster or stronger than when they first enroll in school.

In tracking the physical progress of this year's Nebraska senior football players, we find that they averaged 23 pounds heavier than when they came as freshman, they improved their 40 yard dash times by nearly two tenths of a second, their agility run by over 2 1/2 tenths, their vertical jump by over 3 inches, their power clean by 100 pounds, and their squat by 170 pounds. The improvement in size, speed, agility, power, and explosiveness is dramatic. None of these players played as true freshman, they were physically and emotionally not ready. When they were freshmen, our scholarship limit was 95. It has since declined to 85 and more freshmen have been forced to play--most are at a considerable disadvantage and run more risk of injury. If the limit is dropped to 60, as some propose, nearly all freshmen will have to play--this is not sound from a safety standpoint.

Over the last 20 years our scholarships at Nebraska have declined from 45 initial grants per year and over 150 total grants to the current limit of 25 initial and 85 total. We have also lost almost 50% of our coaches.

Additionally 5 to 10 players are hurt and can't play at any given time--we do not have an injured reserve squad or a waiver wire that enables us to acquire a player when injuries occur as NFL teams do. This past season, we lost 3 quarterbacks and were down to one walk-on player whom we had intended to red-shirt. We moved a walk-on receiver who had never played the position before to QB and also suited one of our student managers up as a QB so we could finish out the season. Many schools report similar problems with depth when injuries occur. The decrease from 95 to 85 players has put almost all Division I football programs in a very tenuous numbers position.

A number of college teams lose a player or two early to the NFL almost every year. This exacerbates the numbers problem we are facing today.

In the past 10 years at the University of Nebraska football expenses, adjusted for inflation, have declined by 3%. During this same 10 year period expenses for all other sports have increased by over 70%--the greatest increase has been in women's sports. Football revenues have increased by nearly $7,000,000 over that same 10 year span. As a result, football spends less, makes much more with far fewer players and coaches.

Thank you for your time and your attention to this matter.

Women's participation numbers increase again

The number of women participating in varsity sports at NCAA institutions grew more than 3.5 percent in 1992-93, bringing the number of female competitors to the threshold of the 100,000 mark.

The NCAA's annual participation study showed that 99,589 women competed in varsity sports in 1992-93. That is the largest total ever and is the third consecutive annual increase. The total increase for women over 1991-92 was 3,392 participants (3.52 percent).

A total of 187,041 men participated, the most since 1986-87. Men's participation increased by 996—or 54-hundredths of one percent—from 1991-92.

The combined participation total of 286,900 is the highest since 1985-86, when 295,382 took part in NCAA sports. Of the 1992-93 total, 65.2 percent were men and 34.8 percent were women.

The total number includes competitors in crew and squash, which are sponsored by 10 or more schools.

The sports with the biggest participant gains were women's soccer

See **Numbers**, page 23 ▶

Year to year

How sports-participation numbers compare over the last decade:

Year	Men	Women	Total
1984-85	201,063	91,669	292,732
1985-86	200,031	95,351	295,382
1986-87	190,017	91,101	281,118
1987-88	178,941	89,825	268,766
1988-89	180,144	91,406	271,550
1989-90	177,156	89,212	266,368
1990-91	184,593	92,778	277,371
1991-92	186,045	96,467	282,512
1992-93	187,041	99,859	286,900
	(- 14,022)	(+ 8,190)	(- 5,832)

SUBCOMMITTEE ON POSTSECONDARY EDUCATION HEARING ON TITLE IX 5/9/95

P. O. Box 27498
Towson, Md 21285
May 9, 1995

The Honorable Howard P. "Buck" McKeon,
Chairperson
Subcommittee on Postsecondary Education,
Training and Life-Long Learning
U. S. House of Representatives
Washington, D. C. 20515

Dear Chairperson McKeon:

From 1988, I have been involved in efforts to obtain compliance by institutions of education with the Title IX Law, Education Amendements of 1972, and its implementing regulations in athletic programs. This law forbids sex discrimination by institutions which receive Federal resources. I have a Master of Business Administration and a Master of Science in Public Administration Degrees from Shippensburg University, Shippensburg, Pennsylvania.

I am deeply honored to incorporate some of my experiences and thoughts on Title IX into your official hearing record.

First, permit me to say that I concur with the opinions expressed by Ellen J. Vargyas, former Senior Counsel For Education and Employment, National Women's Law Center, in the Hearing before the House Subcommittee on Commerce, Consumer Protection and Competitiveness of April 9, 1992 and Dr. Donna A. Lopiano, Executive Director, Women's Sports Foundation, in the Hearing before the same subcommittee of February 17, 1993. In the later Hearing Dr. Lopiano recommends better public and OCR investigative education with stricter enforcement by OCR (see pages 17-[illegible]).

I do recognize that in the present circumstances this Congress may not provide OCR with the additional financial support and manpower recommended by [illegible] [illegible] [illegible] for recommendations (see pag[illegible]

In the policy area of OCR Intercollegiate Athletics Investigator's Manual used by OCR staff in conducting investigations and compliance reviews in intercollegiate athletics is seriously defective as identified by the [illegible] [illegible] [illegible] (see page [illegible]) and a 1992 paper under the direction of Professor Kenneth Tolo, The Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, titled "Gender Equity in Intercollegiate Athletics: The Inadequacy of Title IX Enforcement by the U. S. Office for Civil Rights (see Exhibit #[illegible]). On May 2, 199[illegible], this manual remained without any current revisions.

For these reasons, I recommend that the Congress remove a proportional share of OCR resources which approximates the amount utilized in its Title IX intercollegiate athletics investigations and enforcement. These resources would be deposited in a revolving fund to support any members of the general public filing lawsuits seeking enforcement of Title IX in intercollegiate athletics. As a condition of access to this fund, all public Title IX litigants must agree to petition U. S. District Courts for the reimbursement of attorney's fees and damages. At least one-half of any awarded damages will be returned by all public litigants to the fund for the support of all other Title IX or intercollegiate athletics disclosure litigants. Approximately 20% of awarded damages will be given to all Title IX litigants as an incentive to pursue disclosure and Title IX litigation.

This or another distribution formula should be established as conditions for withdrawal of fund resources.

Because many of these public litigants may be motivated by the monetary rewards of litigation and have no other interests in any institutions of higher education, they would be less concerned with retaliation by institutions against which they file lawsuits. This plan may lead to increased Title IX litigation which is not presently pursued by parents or coaches because they are fearful of retribution from the sued institutions. Dr. Lopiano stated that her office receives about 300 calls per year on Title IX concerns. However few are willing to pursue a remedy because of this fear of institutional retribution(see hearing, page 26).

Private litigants may presently pursue qui tam actions under the False Claims Act. They are, also, incentivized by a percentage of the funds awarded by a court under the False Claims Act. I am advocating that the Congress establish similar legislation for Title IX and intercollegiate athletics disclosure litigation.

I believe that ligitation support for intercollegiate athletics disclosure is necessary because of my experiences in requesting two institutions of higher education for reports and audits on compilations of intercollegiate athletics revenues and expenditures under Title IV, Higher Education Act Amendments of 1992, §490(a)(3)(18)(A) or 20 USC §1094(a)(18)(A) and (B). The institutions were Loyola College of Maryland and Georgetown University. One institution, despite a few telephone calls, has not provided any response since September 25, 1994. The other provided a spreadsheet without any dollar amount for women's athletic scholarships or women's coaches. Both institutions provide women with athletic scholarships. Because of this violation, I believe that the October 1994, Equity in Athletics Disclosure Act, also, needs legislation to permit financial support from the proposed fund for public litigants.

Senior U. S. District Judge Raymond J. Pettine in his March 29, 1995 decision, Amy Cohen v. Brown University, states that since the issuance of the First Circuit's opinion, the Third, Sixth, Seventh and Tenth Circuits are in agreement with the First Circuit's interpretation of the law and relevant agency documents of Title IX athletics discrimination suits page 7). I hope that the financial plan which I suggest above will result in Title IX athletics discrimination lawsuits in the remaining Circuits. After that time, it may be more appropriate for the Congress to consider whether any disagreements among Circuits requires Congressional legislation to establish consistent precedents, if the Supreme Court has not issued an opinion.

Now, I will describe some of my thoughts and experiences which I believe show deficiencies in the OCR Title IX investigations and monitoring of compliance assurances and support the position that the OCR should be removed from any Title IX athletics responsibilities.

1. In OCR Case #03922078 dated November 19, 1992, the OCR Letter of Findings(LOF) states that in 1990, the University realigned its athletic program into four tiers. In Tier I for men's teams are basketball, football and lacrosse and for women's teams are basketball, volleyball and field hockey.

This situation is addressed in comment #7 of the policy interpretation(PI) where OCR responded to a question about comparability between men's and women's major and minor sports

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with men's major ones being football and basketball as follows:

> "Second, no subgrouping of male or female students(such as a team) may be used in such a way as to diminish the protection of the larger class of males and femeles in their rights to equal participation in educational benefits or opportunities. Use of the "major/minor" classification does not meet this test where large participation sports(e.g., football) are compared to smaller ones(e. g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex."(The Federal Register, Vol. 44, #239, December 11, 1979, page 71422).

This PI is violated by tier I's larger numbers of males in football, basketball and lacrosse teams with the effect of providing benefits and opportunities disproportionately to male athletes. Data supporting this belief of male athlete favoritism is found on pages 15-6 of the Letter of Findings There it's indicated that Tier I male athletes sum to 161 males or 42.7%(161/377) of the total male intercollegiate athletes compared with 57 Tier I females or 23.1%(57/247) in the women's program. In the Fall of 1990 semester, 51.9% of undergraduates enrolled at the University were males.

Similarly, in his March 29, 1995, decision Senior U. S. District Court Judge Pettine found that the existence of a two tiered structure in the intercollegiate varsity program violated the "treatment" aspect of the Title IX regulations because far more male athletes were on "University-funded teams".

2. Although Dr. Lopiano recommends that OCR make referrals to the Department of Justice in those cases where institutions are not implementing compliance agreements: the OCR position is that, if an institution implements a part of these agreements, OCR will ignore the most outrageous violations of Title IX. For example, in case #03892045, the University promised to consider whether its athletic offerings accommodate the interests and abilities of

students when it proposes to change its offerings. The University analysis of its survey showed that its student were interested in women's soccer. Thus, this sport was added during agreement monitoring. However, both women's and men's indoor track and swimming and diving teams were dropped simultaneously in the same academic year in which women's soccer was added. Shockingly, the women's swimming and diving team had the largest number of female intercollegiate athletes in the women's program. After a protest which included numerous newspaper stories and a petition signed by more than 5,000 individuals, the University reinstated the men's and women's swimming and diving teams.

The Title IX regulation requires consideration of whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes. Senior Judge Pettine states in his Cohen decision states that determining compliance with this factor requires application of the Policy Interpretation's(PI) three prong test(see page 32). Quoted below is this Judge's analysis of this test.

> "Three prong test establishes a standard of equality that requires Brown to provide substantially equal numbers of intercollegiate athletic opportunities for men and for women, unless Brown either (1) steadily increases the number of such opportunities for women under prong two, or (2) fully and effectively meets the athletic interest and ability of women under prong three such that Brown cannot further improve the athletic opportunities for women until their interest and abilities further develop."(Cohen, page 64).

In case #03892045, the undergraduate students were about 60% female; and data(which the University provided for its 1993-94 academic year)indicated that women declined in their program from 195 to 191. I remain uncertain whether the University has excluded the deletion impact of the women's indoor track team from the totals in its female program participation numbers. Nevertheless, a continued expansion in female numbers has not occurred nor can the University claim full accommodation of the underrepresented sex with the dropping of women's swimming and diving(temporarily) and women's indoor track.

Although this failure to comply with Title IX was verbally acknowledged in my discussions with the OCR investigator, the OCR position continues to ignore this bold violation during compliance agreement monitoring. Moreover, the University was originally scheduled to submit its final compliance report on September 15, 1992, but OCR has annually extended this deadline so that another report in the area of recruitment for the academic year 1994-95 is due by September 30, 1995. I, also, know that a former softball denied that her team had locker rooms as stated in the University's compliance report.

3. The above cited Working Paper No. 69 written under the direction of Professor Tolo describes the deficiency of the OCR 1990 Investigator's Manual applied to the area of provision of equivalent publicity(see exhibit #2, pages 18-19). Below is some additional information concerning the cases #03882099 and #03882097 described on page 19 of this working paper.

Case #03882097 was issued with an LOF on April 5, 1989 and case #03882099 with another LOF on May 15, 1989. The same regional office issued these Letter of Findings(LOF). OCR headquarters issued January 1994 decisions reversing these regional decisions on the grounds that the regional office "should not have accepted as nondiscriminatory certain justifications presented by the recipient institutions". On remand to the regional office, this office issued a letter to one of the recipient institutions which states as follows:

> "Because of the scope of the complaint and the inclusion of the issue of Title IX athletics in the area of publicity, which OCR regards as a priority issue, a massive amount of regional resources would be required to resolve the issue raised by the complaint. Thus, in accordance with OCR's procedures, we will treat the issue under a compliance review. OCR will limit the investigation of this compliance review to determining whether female athletes at the University are provided equal athletic opportunity with respect to publicity and promotion of their games. . . ."
>
> "Please note that OCR's procedures provide for the investigation to be terminated if the institution has taken, or commits itself to take in the future, actions which completely resolve the issue(s) raised in this compliance review. Under these circumstances, this office may close this compliance review without a determination of compliance or noncompliance with the applicable regulations. We would be required to confirm, either presently or through future monitoring, that the agreed upon actions have been carried out. . . ."

The OCR procedures referred to above are found in the Complaint Resolution Manual issued on November 30, 1993. On page 11 of this manual, it states that there is no formal reconsideration process, but the office will answer questions the complainant may have regarding resolution of the case. This no appeal policy is applied to all cases regardless of when the complaint was filed.

In this manner without a period for public rulemaking as required under the Administrative Procedures Act, the Policy Interpretation requirement that "The Department must investigate all valid(written and timely) complaints alleging discrimination on the basis of sex in a recipient's programs. (45 CFR 80.7(a))." is ignored.(The Federal Register, December 11, 1979, page 71418).

4. By letter of July 2, 1992, OCR case #03922987 was opened for investigation. As of May 2, 1995, this investigation continued open with the regional office still analyzing the data. Morover headquarters, OCR, by letter of July 31, 1991, acknowledged receipt of an appeal under case #03-88-2098. This case was decided by the regional office on June 23, 1989. On May 2, 1995, I spoke with the OCR official who signed this acknowledgement letter. She was unaware of the present status of this appeal.

5. In case #03892045, an OCR regional office issued an August 24, 1990 Letter of Findings in the area of competitive and practice facilities with only one disparity found, electronic scoreboards for 4 men's teams: soccer, football, men's lacrosse and baseball. OCR, also, found that women's teams have a portable scoreboard utilized without any problems. In reality this portable scoreboard is used only by the women's field hockey and lacroose teams and is so small(about 2 and 1/2 feet by 3 feet)that it is barely visible from the opposite end of the field. Moreover, both ends of this playing field have either upward or downward slopes behind the net. Both the women's field hockey and lacrosse use this same field with the downward slope at one end changing to 4 of 5 feet of concrete pavement. Because of these slopes behind the net, the referees have instructed players to take the ball into play many feet to the left or right of where the ball originally went out of bounds. But the men's lacrosse team always played in the stadium with adequate flat ground behind both nets and an electronic scoreboards about 30 feet by 15 feet. This size makes it visible from any part of the playing field. Moreover, it has an electronic " rolling tape" for the fans

to read announcements from, in addition to an entry which shows the the time outs remaning. Also, this stadium has a press box with a public address announcer who provides commentary on penalties, scoring, time outs, etc. In addition, there exist several large billboards or marquees on the campus in several locations announcing the men's lacrosse schedule but not the women's lacrosse or field hockey schedules (see attached 12 pictures). Men's football, also, plays their season games in this stadium.

For men's baseball, there, also, exists a similarly large electronic scoreboard. The OCR LOF describes this field as: "The baseball team has one of the best intercollegiate fields in the country." It has a batter's cage for batting practice, two pitcher's bull pens for pitcher warm-ups and two foul ball poles at the end of the left and right outfields. It, also, has an approximately 6 or 7 foot sturdy, perhaps steel, fence encircling the entire field with an approximately, 10 feet gravel warning track at the end of the outfield and in front of the semicircular fence. This warning track's function is to alert players chasing the ball of the fence's proximity; and, thereby, allowing the player to avoid any accidental collision with the sturdy fence. There are two large concrete dugouts about 8 by 100 feet and a twenty five foot high fence behind home plate protecting spectator's benches. As if the large electronic scoreboard was inadequate, there is a public address announcer who introduces the players entering the game as hitters, pitchers, etc (see the enclosed 11 pictures). Although my pictures are for 1993, a very similar situation existed in the 1989-90 when OCR made its on-site investigation.

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But the women's softball team lacks all of these amenities. The scoreboard is about 5 feet by 8 feet, manual and seldom used; the fence is flexible rubber which does not always stop a fast moving ball. One such incident resulted in a referee exclaiming that she hoped they would do something about that fence. This fence only protects players, not spectators, does not exist beyond the first base side of the field nor surround about 1/2 of the outfield. Of course, there is no public address announcer, nor batter's cage, nor pitcher's bull pen, nor dugout for players, nor foul polls etc.(see the enclosed 6 pictures for 1993). This playing field was, also, in a very similar condition in 1989-90 for OCR's on-site visit.

At that time about 54% of all female athletes (softball, field hockey and lacrosse teams) utilized their two playing fields and about 73% of male athletes(lacrosse and football teams) utilized the stadium described above(see page 10 of the LOF). Exhibit #1 describes the Investigator's Manual's standard of "second class status" which must be exceeded for finding a significant disparity which is, also, a Title IX violation. Astonishingly, the OCR on-site team found only one disparity, viz., electronic scoreboards, which "was not sufficient to have a violation in this area." in this case(see page 19 of the LOF).

On May 2, 1995, I spoke with the OCR director of Policy, Enforcement and Program Service at Headquarters who did not provide any time when she believed that the Investigator's Manual's revision will be issued. The reason for this delay is that OCR is attempting to find the ideal standard which would adequately cover the large variety of fact situations in higher education.

I am unaware that any hearings in the former House Subcommittee on Commerce, Consumer Protection and Competitiveness on intercollegiate athletes demonstrated the consequences of inadequate medical care provided to female athletes. Therefore, I am taking this opportunity to share my knowledge in this area about two female intercollegiate athletes from the same institution of higher education.

In an article by John Cannon, entitled "Flaherty sets standard for future volleyball competitors", The Towerlight, December [illegible], it states as follows:

> "I've been playing with injuries throughout my career," said the Tiger tri-captain. Flaherty played her first two seasons with an undiagnosed broken wrist.
> "I kept saying that my wrist really hurt and they'd tape me up," said Flaherty. "They told me it was tendonitis, but at the end of games I'd be in tears." Flaherty consequently had to wear a cast for a year and the wrist eventually required reconstructive surgery-causing her to miss a season." (page 12).

A few years later at the same institution, a women's softball player, also, suffered an ankle injury and constantly complained about the severe pain and was repeatedly treated for a sprained ankle, braced and sent out to play 4 or 5 more games. She, also, played in the same game in which her ankle was injured. Due to the lack of prompt and adequate medical care, she, too, underwent reconstructive surgery to remove a bone chip, ligament and muscle tissue.

I hope that my suggestions for Congressional legislation will speedily create precedents in all Federal Circuits which will end sex discrimination in college athletics. Also, that these precedents will decrease the need for young female athletes to take their claims to court, despite hostile university administrations, to

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ensure that their sisters and daughters will not be subjected to the same second class citizen treatment which they have endured. That these precedents will stop the intense emotional trauma of young female athletes whose sport is suddenly eliminated resulting in an interruption of their higher education. Finally, that these precedents will stop the inadequate medical treatment of more young female athletes which may result in permanent injuries.

Again, I wish to thank the honorable Chairperson and ranking member of this Subcommittee for the opportunity to share my experiences and opinions in the official hearing record.

Very Truly Yours,

Frank R. Soda

cc: Honorable Pat Williams
(w/o pictures)
Encls

Publicity

In 7 of the 18 cases in which publicity was investigated, OCR investigators found institutions in non-compliance. Disparities also were identified in another 6 cases, but the investigators concluded that these schools were in compliance because the disparities existed for nondiscriminatory reasons. The explanations provided for these disparities suggested that inequity with respect to publicity was not only acceptable but appropriate. In its investigation of Furman University, for example, OCR found substantial and pervasive inequities between men's and women's intercollegiate athletics teams in the availability and services of sports information personnel, media coverage, corporate sponsorship, promotional activities, and quantity and quality of publications. Yet OCR concluded that the institution simply needed to provide game program inserts, schedule cards, and promotional posters for the women's teams in order to be in full compliance with respect to this program component (and thus provide women athletes with "equivalent benefits, services, opportunities and treatment . . . in the provision of publicity").

III. OCR'S TITLE IX ATHLETICS INVESTIGATOR'S MANUAL

A familiarity with OCR's 1990 Title IX Athletics Investigator's Manual, the guide for all OCR athletics investigations, is vital to understanding the inadequacies of the agency's letters of finding and overall enforcement. OCR prepared the Investigator's Manual to provide its regional offices with a common framework to investigate and determine Title IX compliance by colleges and universities. However, the Investigator's Manual was created without input from individuals and groups actively involved with gender equity issues, and as a result it fails to capture the spirit of Title IX legislation as articulated in the Title IX Policy Interpretation. A central concern with the Investigator's Manual stems from the tone of its introduction, "Approach to Athletics Investigations" (pp. 1-12), which urges OCR investigators to bring institutions into Title IX compliance with minimal OCR effort. The National Coalition for Women and Girls in Education (NCWGE), in an October 1990 analysis submitted to OCR, noted that the Investigator's

Manual, "rather than outlining a comprehensive approach to the history and identification of sex discrimination in athletics, merely approaches the area in a cursory and selective manner" and that "the [Investigator's] Manual imposes a standard for finding discrimination that is, at once, vague and difficult to meet" (p. 3).

A careful reading of the Investigator's Manual provides additional insights, including the findings outlined below:

1. The Title IX Policy Interpretation states that program components must be "equivalent, that is, equal or equal in effect," and that "the overall effect of any differences" must be "negligible" (Part VII.B.2). The Investigator's Manual, however, states that a "significant" disparity which leads to a violation will only be noted when there is "a single disparity that is so substantial as to deny equal opportunity in athletics to students of one sex" as evidenced by the "second class status" of athletes of one sex (p. 10).

2. The Investigator's Manual states that "there is no rule or number of disparities that when reached constitutes a violation" (p. 10).

3. OCR regional offices have autonomy in determining when violations exist: "The regional offices may exercise discretion in several areas . . . . [They] may modify the charts, interview questions, and the model documents in the appendices as warranted" (Investigator's Manual, p. 4). Yet the investigator is given little formal training or guidance in implementing these measures.

4. The Investigator's Manual introduces the concept of "offsetting factors" in determining compliance: "For factors favoring each sex to offset each other, they need to have the same relative impact within the particular program component . . . . [D]isparities need not necessarily be equal in number to

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offset each other." The term "offsetting" does not appear in the Title IX Regulation or the Title IX Policy Interpretation, yet the Investigator's Manual empowers the investigator to "offset" disparities in the determination of compliance. In the absence of a strong OCR enforcement policy, this use of "offsetting factors" appears to provide investigators an opportunity to find an institution in compliance even when significant disparities exist.

5. The Investigator's Manual promotes an investigation of limited scope in that usually only administrators, coaches, and athletes are interviewed. Although OCR investigators may schedule open meetings at which anyone may speak, these sessions are rarely helpful in providing information or insight to the investigators. This means, as NCWGE correctly notes, "Students who are not athletes because their interests are not being accommodated will not have a voice in the process as described by the [Investigator's] Manual" (p. 6).

In order to understand more fully the deficiencies in OCR letters of finding, the remainder of Section III explores Investigator's Manual-related problems in the same five areas addressed in Section II: Title IX grievance requirements, accommodation of student interests and abilities, athletic financial assistance, coaching, and publicity.

Title IX Grievance Requirements

The 1975 Title IX Regulation became the instrument for implementing Title IX of the Education Amendments of 1972 and for guiding educational institutions receiving federal funds on the terms, restrictions, and requirements of the law. Colleges and universities were given a six-year grace period (from the signing of the legislation) to accommodate compliance standards. Both the Title IX legislation and the Title IX Regulation establish grievance requirements that institutions must meet to guide them in complying with Title IX.

wage discrimination, for example, is the institution's 1987-88 salary information showing that its Division II men's soccer coach received an annual salary of $49,452 and its Division II women's soccer coach received only $4,276.

As another example, OCR, in its investigation of Mercer University, found that 69 percent ($124,022) of total coaching salaries were paid to coaches of men's teams. The agency then concluded that the university was in compliance with respect to this Title IX program component because the institution promised to make the women's volleyball coach a full-time position and provide a salary to this coach sufficient to "eliminate the disparity in coaching compensation." Given the substantial disparity in coaches' salaries, however, this limited action would not appear adequate to eliminate the existing salary inequity. Once again, OCR failed to conduct a sufficiently in-depth review of disparities.

Publicity

Section 106.41(c)(10) of the Title IX Regulation includes publicity as a factor to be examined in determining compliance in "effectively accommodating interests and abilities of both sexes." The Title IX Policy Interpretation expands this statement by noting that "compliance will be assessed by examining, among other factors, the equivalence for men and women of: (1) Availability and quality of sports information personnel; (2) Access to other publicity resources for men's and women's programs; and (3) Quantity and quality of publications and other promotional devices featuring men's and women's programs" (Part VII.B.3.i).

The Investigator's Manual, on the other hand, directs OCR investigators to determine "whether any differences [in publicity] result in a disparity and whether any disparity constitutes a significant disparity" (p. 88). This places the responsibility on investigators to determine if the institution is in violation or in compliance, yet they have little direction from the Investigator's Manual. According to NCWGE, the

Investigator's Manual allows inequities in the "management costs for sports that traditionally attract large crowds, without noting that such differences are permissible only 'if the recipient does not limit the potential for women's athletic events to rise in spectator appeal and if the levels of event management support available to both programs are based on sex-neutral criteria' (Part VII.B.2.c.)" (NCWGE, p. 5).

At Loyola College (Maryland), OCR investigators uncovered numerous disparities in publicity between men's and women's intercollegiate athletics teams. Men's athletics received a higher budget, larger and more professional media guides, and billboards and posters advertising team events. Investigators justified these disparities by asserting that since men's sports garnered more visibility, produced revenue, and were more popular with fans, these differences were nondiscriminatory. However, the absence of a marketing plan for women's sports to increase visibility and popularity through media exposure is discriminatory if women's sports are not provided the opportunity to obtain the level of notoriety and fan support present in the men's athletics program.

Similarly, in an investigation of publicity practices at Towson State University, OCR investigators identified pervasive inequities in all areas of publicity. Nevertheless, they concluded that "the University provides promotional materials and services in a manner which is consistent with the amount of spectator interest in the teams' athletic contests and with the priority given to men's and women's sports offerings." Again, discriminatory publicity practices were viewed by OCR as acceptable because they were consistent with existing inequities between the men's and women's programs.

IV. OCR'S TITLE IX ENFORCEMENT

OCR's lack of resources and seeming lack of commitment to its mission have posed significant obstacles to the agency's effective enforcement of Title IX. Since the enactment of the Civil Rights Restoration Act, the total number of complaints received annually by OCR has nearly doubled, from 1,974 in

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC14

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations. These amendments are necessary to implement a new requirement in the Higher Education Act of 1965, as amended (HEA), recently added by the Improving America's Schools Act of 1994 (IASA). The IASA provision, titled the "Equity in Athletics Disclosure Act (EADA)," requires certain coeducational institutions of higher education to prepare—and make available to students, potential students, and the public—a report on participation rates, financial support, and other information on men's and women's intercollegiate athletic programs. These proposed regulations would implement this new statutory requirement. The statute requires that the Secretary issue final regulations implementing the EADA not later than 180 days following enactment. Thus, the statute requires that final regulations be issued by April 18, 1995.

DATES: Comments must be received on or before April 4, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Ms. Paula M. Husselmann, U.S. Department of Education, 600 Independence Avenue, S.W., ROB3, Room 4318, Washington, D.C. 20202–5346, or to the following internet address: Athletic—Data@ed.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Husselmann, U.S. Department of Education, 600 Independence Avenue, S.W., ROB3, Room 4318, Washington, D.C. 20202–5346. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations (34 CFR part 668) apply to all institutions that participate in the Title IV, HEA programs. The proposed changes in these regulations are necessary to implement changes to the HEA made by the Equity in Athletics Disclosure Act (EADA), which was included in the Improving America's Schools Act of 1994 (IASA), Pub. L. 103–382, enacted on October 20, 1994. The EADA requires that certain institutions of higher education disclose—to students, potential students, and the public—financial, participation, and other information concerning the institutions' women's and men's intercollegiate athletic programs. The EADA is a "sunshine" law designed to make "prospective students and prospective student athletes . . . aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students." (IASA, section 360B(b)(7)) In enacting the EADA, Congress expected that "knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students." (IASA, section 360B(b)(6))

The EADA does not require that this information be submitted to the Federal Government. Institutions of higher education that are subject to the EADA must make the information available to students, potential students, and the public.

Summary of the Proposed Regulations

The following is a summary of the regulations that the Secretary proposes to implement the EADA. The Secretary is interested both in ensuring that students and the public receive consistent, useful information from institutions of higher education about their intercollegiate athletic programs, and in keeping regulatory burden on those institutions to the minimum necessary to carry out congressional intent. The Secretary is also committed to working with organizations that are interested in women's and men's sports in implementing the EADA, including development of proposed and final regulations and any optional reporting formats. The Secretary began consulting with a number of these organizations soon after the law was enacted, and will continue to do so in the future.

The proposed regulations include only the statutory requirements contained in the EADA, as described below. The proposed regulations do not include any requirements except those imposed by the statute. In this summary, the Secretary describes a number of issues that could be addressed in regulations or in non-binding guidance and requests comments on the following questions:

- Which, if any, of these issues should be addressed in the final regulations and how should they be addressed?
- Which issues instead should be addressed in non-binding guidance provided by the Department and how should they be addressed?
- Which issues should not be addressed by the Department because the statutory language is clear or for other reasons?
- Which other issues should be addressed in the final regulations or in non-binding guidance from the Department and how should they be addressed?

1. *Institutions of higher education that are subject to the EADA.*

The EADA applies to any coeducational institution of higher education (IHE) that participates in a Title IV, HEA program and has an intercollegiate athletic program. This statutory provision is set forth in proposed § 668.48(a).

The Secretary interprets "intercollegiate athletic program" to refer to varsity teams. The term "varsity" is also used in the EADA. These are the teams that compete at a certain level of play (against other IHEs' varsity-level teams). The EADA does not apply to intramural teams or to club teams even if such a team plays a limited number of intercollegiate games against varsity teams. The Secretary requests comments on whether the type or level of financial support by the IHE should also be a determinant of whether a team should be considered a varsity team under the EADA.

The Secretary interprets the term "coeducational" to refer to the composition of an IHE's undergraduate student body. Thus, if an IHE has undergraduate students of only one gender, the EADA would not apply to the IHE's intercollegiate athletic program.

2. *Annual report.*

The EADA requires that an institution subject to this law shall annually, for the immediately preceding academic year, prepare a report that contains certain information regarding intercollegiate athletics. The EADA specifies the information that must be included in the report. The statutory reporting requirement is in proposed § 668.48(b).

3. *Full-time male and female undergraduates.*

The report must include the number of male and female full-time

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undergraduates that attended the institution for the immediately preceding academic year. (Proposed § 668.48(b)(1))

The terms "academic year" and "full-time student" are defined in the Student Assistance General Provisions (34 CFR 668.2(b)). For the definition of "full-time student," see 59 FR 22419, published on April 29, 1994. For the definition of "academic year," see 59 FR 61178, published on November 29, 1994. The Secretary could apply these definitions to the EADA regulations and requests comments on whether to use (1) these definitions, (2) other definitions, or (3) no definitions. In particular, should the definition of "academic year," which does not refer to a 12-month period, apply? The Secretary believes that the categories of information required to be reported by the EADA should be with respect to a 12-month period, but requests comments on this issue.

The Secretary also requests comments on whether the term "undergraduate" should be defined, and, if so, how.

4. *Participants on varsity teams.*

The report must include—for the immediately preceding academic year—a listing of the varsity teams that competed in intercollegiate athletic competition and—for each team—the total number of participants, by team, as of the day of the first scheduled contest for the team. (Proposed § 668.48(b)(2)(i))

The Secretary requests comments on who should be included and who should be excluded as team "participants" under the EADA. For example, since "red-shirted" players typically practice with a team and receive athletically-related financial aid, should they be included as "participants?"

5. *Operating expenses.*

The report must include—for the immediately preceding academic year—the total operating expenses attributable to each varsity team. The EADA defines "operating expenses" to mean expenditures on lodging and meals, transportation, officials, uniforms, and equipment. In addition to reporting total operating expenses for each team, an institution may also report those expenses on a per capita basis for each team. An institution may report combined expenditures attributable to closely related teams—such as track and field or swimming and diving. Any such combinations must be reported separately for men's and women's teams. (Proposed § 668.48(b)(2)(ii))

The Secretary interprets the EADA to include expenses for both home and away games and training sessions, including lodging and meals. The Secretary also believes that "total operating expenses" should include the expenses incurred by a team during an entire year, not just those incurred during the sports season of a team. The Secretary interprets the statute to exclude any categories of expenses that are not specifically listed in the law. The Secretary is interested in comments on which expenses should or should not be included under each of the statutory categories (lodging and meals, transportation, officials, uniforms, and equipment).

6. *Head coaches and assistant coaches.*

The institution must indicate in its report—for the immediately preceding academic year—whether the head coach for each varsity team was male or female and whether the head coach was assigned to that team on a full-time or part-time basis. The EADA requires that the institution consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this requirement. The institution must also indicate, for each team, the number of assistant coaches who were male and the number of assistant coaches who were female and whether a particular coach was assigned to that team on a full-time or part-time basis. As with head coaches, the EADA requires the institution to consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for the purposes of this requirement. (Proposed § 668.48(b)(2)(iii) and (iv))

7. *Total amount of athletically related student aid.*

The report must include—for the immediately preceding academic year—the total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall. (Proposed § 668.48(b)(3))

The Secretary interprets this provision of the statute to require that the IHE report two totals—one total for men's teams and one total for women's teams.

The term "athletically related student aid" is defined in section 485(e)(8) of the HEA to mean any scholarship, grant, or other form of financial assistance, the terms of which require the recipient to participate in a program of intercollegiate athletics at an IHE in order to receive that assistance. This definition does not apply automatically to the EADA, which is in subsection (g) of section 485. However, the Secretary believes that the definition in subsection (e)(8) would provide useful guidance for the purposes of the EADA and that having a single definition would promote clarity and consistency in the administration of these statutes. Thus, the Secretary proposes that the definition in subsection (e)(8) be made applicable to the EADA. The Secretary requests comments on whether "athletically related student aid" should also include scholarships to students who are on medical waivers (who therefore are not currently participating on the team) or who continue to receive athletically related aid after they cease to participate on a team for which they had been awarded that aid.

8. *Ratio of aid to male and female athletes.*

The report must give—for the immediately preceding academic year—the ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes. (Proposed § 668.48(b)(4))

The Secretary interprets this provision to require an IHE to calculate a ratio of the total of athletically related student aid awarded male athletes to the total of athletically related student aid awarded female athletes.

9. *Expenditures on recruiting.*

The report must include—for the immediately preceding academic year—the total amount of expenditures on recruiting, separately for men's and women's teams overall. (Proposed § 668.48(b)(5))

The Secretary interprets this provision of the statute to require that the IHE report two totals—one total for men's teams and one total for women's teams.

The Secretary requests comments on whether a definition of "expenditures on recruiting" is necessary, and, if so, which expenditures should or should not be included in the report as "expenditures on recruiting."

10. *Total annual revenues.*

The report must include—for the immediately preceding academic year—the total annual revenues generated across all men's teams and across all women's teams. In addition, an institution may report those revenues by individual team. (Proposed § 668.48(b)(6))

The Secretary interprets this provision of the statute to require that the IHE report two totals—one total for men's teams and one total for women's teams. The Secretary interprets the term "total annual revenues" to mean gross income, since there is no indication in the EADA that Congress intended anything less than that amount.

Under section 487(a)(18) of the HEA, IHEs are currently required to make an annual compilation of revenues and expenses attributable to "football, men's

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basketball, women's basketball, all other men's sports combined, and all other women's sports combined (with respect to the institution's) intercollegiate athletics activities." The revenues and expenses to be calculated for this purpose are set forth in section 487(a)(18)(B) (i) and (ii) (20 U.S.C. 1094(a)(18)(B) (i) and (ii)). The Department's regulations implementing these statutory requirements are in 34 CFR 668.14 (d) and (e) (59 FR 22427–22428, published April 29, 1994). The specific definition of "operating expenses" in the EADA precludes using the definition of "expenses" in section 487 and the Department's regulations. However, the Secretary will consider the extent to which the definition of "revenue" in these provisions should be used in deciding what should be included in "total annual revenues" under the EADA.

The Secretary requests comments on whether the EADA regulations should adopt a definition of "total annual revenues" that is different from the definition of "revenue" in § 668.14, and if so, what specific sources of income should or should not be included in "total annual revenues."

11. *Coaches' and assistant coaches' salaries.*

The report must include—for the immediately preceding academic year—the average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports. If a head coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the EADA states that the institution should divide the salary by the number of teams for which the coach had responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams. The report must also include the average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports. (Proposed § 668.48(b) (7) and (8))

The Secretary interprets "across all offered sports" to mean a single average for all men's sports in the aggregate and a single average for all women's sports in the aggregate.

The Secretary requests comments on what types of compensation should be included in a coach's or assistant coach's "salary" to provide an accurate picture of relative compensation. For example, should "salary" include bonuses or other monetary benefits?

The Secretary also requests comments on the determination of an average annual institutional salary if unpaid volunteers serve as head coaches or assistant coaches. Consistent with the provisions in the EADA that volunteers serving as part-time or full-time coaches or assistant coaches should be counted as such, the Secretary believes that their salaries (or lack thereof) should be reflected in the average annual institutional salaries calculated by the IHE. The Secretary believes that unpaid volunteer coaches and assistant coaches could be included in these computations with a designated salary of zero dollars. However, the Secretary requests comments as to whether the report should instead simply include the number of unpaid volunteers who served as coaches and assistant coaches without including them in the computation of average annual institutional salaries.

Because the EADA states that an IHE "should" allocate a coach's salary if he or she coaches more than one team, the Secretary believes that the statute requires that an IHE shall do the allocation, and the proposed regulations so provide.

12. *General issues.*

The Secretary believes that coeducational teams should be reflected in the IHE's report, and requests comments on how this could be done most accurately and with minimal burden, particularly under the EADA provisions that ask for information separately for "men's and women's teams." For example, the salary for a head coach of a coeducational team could be prorated according to how many members of the team are male and how many are female.

Some expenses, revenues, and salaries may be attributable to more than one activity. In general, the Secretary believes that an IHE should prorate these figures in a reasonable manner and to indicate in the report how the figures were calculated, so that students, potential students, and the public will understand the basis for the calculations. If a faculty or staff member also coaches, the IHE should make a reasonable determination of how much of the professor's salary is attributable to his or her coaching duties. If a women's team and a men's team share transportation to competitions held at the same site, the transportation expense should be prorated according to the relative number of female and male athletes who share the transportation. Are there other situations where proration would be necessary to develop the information required by the EADA? What guidance should the Secretary offer to assist schools in making the prorations in a consistent manner that allows for comparisons among schools? What burdens would be imposed on IHEs in prorating expenses, revenues, or salaries?

In calculating and reporting expenses, revenues, and salaries, the Secretary interprets the EADA to require IHEs to use actual amounts expended or earned during the immediately preceding academic year, not budgeted or estimated amounts. The Secretary requests comments on any burdens that would be imposed on schools in meeting an October 1 deadline and in using actual data.

The EADA requires that the information in the annual report be for the immediately preceding academic year. How can this requirement be made to work for an IHE whose fiscal year is not the same as its academic year?

As noted above, certain definitions in 34 CFR Part 668, the Student Assistance General Provisions (SAGP), could apply to these regulations. The SAGP also contains other regulations that are pertinent to the EADA, including recordkeeping requirements in § 668.23 and the enforcement and appeal provisions in Subparts G and H of Part 668. Under section 443 of the General Education Provisions Act (20 U.S.C. 1232f), as amended by the IASA, records under the EADA generally will have to be maintained by an IHE for three years.

Under the Student Right-to-Know Act (20 U.S.C. 1092(a)(5)), the Secretary is required to permit an IHE that is a member of an athletic association or athletic conference that has voluntarily published data, or has agreed to publish data, that the Secretary considers substantially comparable to the information required under the Act, to use that data to satisfy the requirements of the Act. The Secretary requests comment on whether a similar provision should be included in the EADA regulations.

13. *Format for the report.*

The Secretary believes that the information in IHEs' reports under the EADA should be as consistent as possible to assist students, potential students, and the public understand and use that information. The Secretary is also aware that differences exist among intercollegiate athletic programs. Given these factors, the Department is considering development of an optional model format that IHEs could use for the annual report required by the EADA. Such a format would be based on and developed in consultation with athletic conferences, schools, and groups interested in women's and men's sports. Should such a form be developed and made available? Can one format be used by all of the types of IHEs that will be subject to the law, or will a small number of different formats be necessary? If the latter, on what basis should institutions be differentiated?

Do any of the categories of information required by the EADA simply not apply to some IHEs? If so, how should regulations, non-regulatory guidance, or a model format address this situation?

14. *Disclosure to students and the public.*

The EADA requires that an institution of higher education subject to the Act shall make available to students and potential students, upon request, and to the public, the information contained in the report. The institution shall inform all students of their right to request that information. The Act requires that each institution make available its first report not later than October 1, 1996. These statutory provisions are set forth in proposed § 668.41(e).

Each IHE must make its first report available by October 1, 1996. The Secretary believes that October 1 also should be the deadline for subsequent annual reports, and would best meet the needs of IHEs, students, and potential students.

The Secretary believes it is particularly important that students, potential students, and parents have easy and timely access to the information in this report. How should an IHE give notice to each of these groups that the report is available? How should the IHE make the information accessible to students, potential students, and the public? The Secretary does not believe that students or potential students should be charged for copies of the report but is sensitive to the possible financial burden on IHEs and requests comments on this matter. Also, should an IHE be allowed to charge the public for copies of the report?

Executive Order 12866

1. *Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements. Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on how the final regulations should be written to minimize potential costs or to increase potential benefits resulting from these proposed regulations consistent with the purposes of the EADA.

2. *Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.48 *Report on athletic program participation rates and financial support data.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5121, FB-10), Washington, D.C. 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small coeducational institutions of higher education that participate in Title IV, HEA programs and that have intercollegiate athletic programs. However, the regulations would not have a significant economic impact on these small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would not impose any requirements except the statutory requirements in the EADA.

Paperwork Reduction Act of 1980

Section 668.48 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Educational institutions that are public or nonprofit institutions or businesses or other for-profit institutions may participate in the Title IV, HEA programs. IHEs will need and use the information required by these regulations to meet the disclosure requirements of the EADA.

Annual public reporting and recordkeeping burden contained in the collection of information proposed in these regulations is estimated to be 18,000 hours, including the time for searching existing data sources and gathering and maintaining the data needed.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant

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programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: January 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

The Secretary proposes to amend Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.41 is amended by revising the heading, removing and reserving paragraphs (a) and (b), reserving paragraphs (c) and (d), and adding a new paragraph (e), to read as follows:

§ 668.41 Reporting and disclosure of information.

(a)–(d) [Reserved]

(e)(1)(i) An institution of higher education subject to § 668.48 shall make available to students and potential students, upon request, and to the public, the information contained in the report described in § 668.48(b).

(ii) The institution shall inform all students of their right to request that information.

(2) Each institution shall make available its first report under § 668.48 not later than October 1, 1996.

(Authority: 20 U.S.C. 1092(g)(3), (5))

3. Section 668.48 is added to subpart D to read as follows:

§ 668.48 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to each coeducational institution of higher education that—

(1) Participates in any Title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Report.* An institution subject to this section shall annually, for the immediately preceding academic year, prepare a report that contains the following information regarding intercollegiate athletics:

(1) The number of male and female full-time undergraduates that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants, by team, as of the day of the first scheduled contest for the team.

(ii) Total operating expenses attributable to those teams. For the purposes of this section, the term "operating expenses" means expenditures on lodging and meals, transportation, officials, uniforms and equipment. An institution—

(A) Also may report those expenses on a per capita basis for each team; and

(B) May report combined expenditures attributable to closely related teams—such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

(iii)(A) Whether the head coach was male or female and whether the head coach was assigned to that team on a full-time or part-time basis.

(B) The institution shall consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(iv)(A) The number of assistant coaches who were male and the number of assistant coaches who were female for each team and whether a particular coach was assigned to that team on a full-time or part-time basis.

(B) The institution shall consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for the purposes of this report.

(3) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

(4) The ratio of—

(i) Athletically related student aid awarded male athletes, to

(ii) Athletically related student aid awarded female athletes.

(5) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

(6) The total annual revenues generated across all men's teams and across all women's teams. An institution may also report those revenues by individual team.

(7)(i) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

(ii) If a head coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution shall divide the salary by the number of teams for which the coach had responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(8) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams across all offered sports.

(Authority: 20 U.S.C. 1092(g)(1), (2), (4))

[FR Doc. 95-[illegible] Filed 2-2-95; 8:45 am]

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"(B) The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

"(i) convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title; or

"(ii) judicially determined to have committed fraud involving funds under this title.

"(17) The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

"(18)(A) With respect to any institution that offers athletically related student aid, the institution will—

"(i) cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of its fiscal year, of—

"(I) the total revenues, and the revenues from football, men's basketball, women's basketball, all other men's sports combined, and all other women's sports combined, derived by the institution from its intercollegiate athletics activities;

"(II) the total expenses, and the expenses attributable to football, men's basketball, women's basketball, all other men's sports combined and all other women's sports combined, made by the institution for its intercollegiate athletics activities; and

"(III) the total revenues and operating expenses of the institution; and

"(ii) make the reports on such compilations and, where allowable by State law, the audits, available for inspection by the Secretary and the public.

"(B) For the purpose of subparagraph (A)—

"(i) revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues, appearance guarantees and options, concessions and advertising, but revenues such as student activities fees or alumni contributions not so allocable shall be included in the calculation of total revenues only; and

"(ii) expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies, but expenses such as general and administrative overhead not so allocable shall be included in the calculation of total expenses only.

"(19) The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this title due to compliance with the provisions of this title, or delays attributable to the institution.

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NEWS

**SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND COMPETITIVENESS**
Energy and Commerce Committee
U.S. House of Representatives

Cardiss Collins, Chairwoman

FOR IMMEDIATE RELEASE
June 22, 1993

CONTACT: John C. White
Donovan Gay
202/226-3160

COLLINS TO CHAIR GENDER EQUITY HEARING

Five athletes who went to court to force their universities to provide equitable sports programs for women and to comply with Title IX, the federal law that forbids sex discrimination in higher education, are scheduled to testify at a hearing Wednesday chaired by Congresswoman Cardiss Collins, chairwoman of the Subcommittee on Commerce, Consumer Protection, and Competitiveness.

Collins, who has conducted two previous hearings examining gender equity in college athletics, said, "Educators, athletic administrators, and lawyers have had their chance to tell their side of the story. Today we'll hear firsthand just how sex discrimination has affected some student athletes."

The hearing will be held at 10 a.m., Wednesday, June 23, in Rayburn House Building Room B352.

[illegible] to wait for the full enforcement of a law passed by

NATIONAL WOMEN'S LAW CENTER

20 YEARS
ADVANCING WOMEN'S RIGHTS

FOR IMMEDIATE RELEASE
JUNE 23, 1993

CONTACT SHARON FISCHMAN
202-328-5160

STATEMENT OF ELLEN VARGYAS, SENIOR COUNSEL, NATIONAL WOMEN'S LAW CENTER ON GENDER EQUITY IN COLLEGE ATHLETICS

The battle to overcome sex-discrimination in college athletics has been a long and frustrating uphill climb. Although Title IX was enacted twenty-one years ago, recent studies clearly show that the problems of sex-discrimination in athletics are still prevalent today in colleges and universities across the United States.

According to the N.C.A.A., for example, women make up only 30 percent of all college athletes, receive only 20% of the monies allocated to college sports programs and are given fewer than one in three of the tens of millions of dollars which are spent yearly on athletic scholarships. In 1993, young women who ask for nothing more than simple fairness, are still forced to turn to the courts to vindicate their rights. It is deplorable that the higher education community, including their powerful representative organizations such as the N.C.A.A., have refused, to date, to exercise badly needed leadership to actively and effectively address the issue of sexual discrimination in sports.

These young women who appear here today are truly the front line troops in the fight for equality. They deserve the highest praise for their courage and dedication in their efforts to ensure that their younger sisters -- and all of our daughters -- will not face the same arbitrary and discriminatory barriers that have prevented them from developing their full potential. By taking their claims to the courts and by refusing to be intimidated by hostile university administrations, these women have successfully created the precedents which will finally end the pervasive and persistent problem of sex-discrimination in college athletics.

It has been my deep pleasure to be associated with these women and this effort. Beginning with the representation of Rollin Haffer and her fellow class members in the Temple litigation, continuing by providing guidance to many dozens of students, coaches, parents and other concerned persons over the years, and now, through the representation of the plaintiffs in the pending cases against Colorado State University and the University of Texas at Austin, I have been privileged to offer them advice, counsel and legal representation.

I commend today's witnesses for the actions they, and the plaintiffs in other lawsuits who could not be here, have taken to turn the promise of Title IX into a reality.

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The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women legal rights. The Center focuses on major policy areas of importance to women and their families including employment, education, reproductive rights and health, family support and income security, with special attention given to the concerns of low-income women.

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Christopher Jon Veber
01641 S.W. Comus Street
Portland, OR 97219
(503) 636-4039

May 17, 1995

Congressman Buck McKeon
United States House of Representatives
Longworth House Office Building
Washington, DC 20515

Testimony Submitted for Subcommittee on Post Secondary Education, Training, and Lifelong Learning under the Committee for Economic and Educational Opportunities.

Statement

Based on my experience as a Varsity Member of the 1995 NCAA championship men's swimming and diving team, the Student Board Member of the Board in Control of Intercollegiate Athletics and President of the Undergraduate M Club Student-Athlete Advisory Council, I feel strongly about Title IX and collegiate athletic department compliance.

I believe my perspective is unique and specific to my personal and professional experiences while attending the University of Michigan. I will comment on behalf of Michigan's twenty-two varsity teams.

I was exposed to data provided by the University of Michigan Athletic Department as well as information provided by Ann Goodman James, President of the College Swimming Coaches Association of America and Spokesperson for the National Sports Coalition and by Dale Anderson, Professor of Law, Michigan State University. I also reviewed the recommendations of the Board in Control's Gender Equity Committee.

Universities must seek to increase female opportunity in athletics where female interest and ability exist, consistent with the congressional intent expressed in Title IX of the Educational Amendments of 1972. The creation of these opportunities should include both the elevation of additional emerging women's sports to varsity status, and encouraged participation on existent women's teams.

Universities must do everything in there power to maintain all the current men's sports as they are today. The deletion of men's sports is a negative response to gender equity as it does not increase opportunities or scholarships for women's athletics. Furthermore, imposing squad limits on male athletic teams must also be classified as a negative response to gender equity. Reducing the number participants on a male team does not increase opportunities or scholarships for women's athletics. This kind of action would necessarily result in cutting walk-ons from the rosters of male teams, seriously reducing the opportunities for males to participate in athletics.

Athletic departments realize non-recruited athletes are often among the top contributors to the

University after graduation. They are also often among the top academic achievers while enrolled in the University. To cut these males from athletic squads in the name of gender equity would also generate unwarranted resentment among male athletes toward women's programs.

I understand there will be financial implications to the reality of gender equity, but I recommend that universities nationwide continue to add women's programs and scholarships past that level in order to increase female opportunity where female interest and ability exist. I also recommend universities encourage the fulfillment of empty participatory slots on all women's teams and do not mandate squad limits on men's sports or consider the elimination of any men's sports.

Thank you for your time and consideration to this matter.

Sincerely,

Christopher Jon Weber

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